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THE *vol 21*
Attorney's Practice
IN
The Court of King's Bench :
OR, A N
INTRODUCTION
TO THE

Knowledge of the Practice of that Court, as
it now stands under the Regulation of
several late Acts of Parliament, Rules
and Determinations of the said Court :

WITH

Variety of useful and curious Precedents in *Eng-
lish*, settled or drawn by Counsel ; and a com-
plete INDEX to the Whole.

Robert Richardson

By a GENTLEMAN of the *Inner Temple*.

The **Second Edition**, with large **Additions**.

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THE
Attorney's Practice

THE CODE OF HENRY'S REIGN
OR A
INTRODUCTION

Rec. Dec. 7, 1904.

Printed by Henry Lintot, Stationer of A.
and W. C. Johnson at the Hall
Moon Palace the Stationer in the year

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P R E F A C E

T H E

P R E F A C E.

MOST of the modern Books upon this Subject being but mere Copies, or bad Translations of old ones, long since grown obsolete by the Variation of Practice, with the Addition only of a few Rules of Court or the Abstract of an Act of Parliament injudiciously inserted, have, instead of being serviceable, proved hurtful, have, instead of shewing the young Practicer the plain and direct Way, led him quite contrary, and have been so far from giving him any insight in-

P R E F A C E.

to the Practice of the Court, that they have puzzled and confounded his Judgment by the Transcribers handing down Rules and Methods of Practice as long since out of Use as the Books they have copied; so that many have chose rather to inquire the Way of Passengers than follow such blind Leaders. Besides most of the antient Books of Practice were wrote by Attorneys or Practicers in the Court of Common Pleas, who being almost as little acquainted with the Practice of this Court, as the modern Editors of those Books seem to be with the Practice of either Court, have wrote but sparingly on this Head; so that if the Practice of this Court, as published in those Books, was the Practice at this Day, their Account of it is by no Means copious

P R E F A C E.

pious enough to give a young Attorney a sufficient Insight into the Practice of a Court so extensive in its Jurisdiction as the Court of King's Bench is. These Reasons occasioned the Publication of the first Edition of this Work, in which the Author with great Labour separated the modern from such of the antient Practice of the Court as was then out of Use: He confined himself to such Rules of the Court as were then in Force, and to such Acts of Parliament and adjudged Cases as related to the then present Practice of the Court; whereunto he added such Observations as he himself had made in the Course of many Years Practice, and which he had Reason to hope would not be thought an unacceptable Part of the Work: He also added

P R E F A C E.

such Precedents as were of frequent Use in the Practice, and which were for the greatest part drawn by the most eminent Pleaders.

The great and uncommon Success the first Edition of this Work met with, being approved of by the most experienced Practicers of the Court, and commended as the most useful Book hitherto published upon this Subject, induced the Author to undertake the publishing this second Edition, wherein he has taken Notice of such Variations in the Practice as have happened since the Printing of the first Edition, and inserted a great Variety of useful Notes and Observations on the Practice: This, together with an additional Number of Precedents (a Thing desired

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fired by many on the Publication of the first Edition) has swelled this Work to the Bulk of two Volumes.

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In this Edition it was attempted that the second Volume should contain nothing of what was contained in the first Edition, so that a Purchaser of the first Edition might have made that complete by purchasing only the second Volume of this Edition; but the Thing was found impracticable, and therefore it is to be hoped will be excused; for either the additional Notes and Observations on the Practice must have been inserted only in the second Volume, which would have rendered them, if not quite useless, yet at least very inconvenient to the Reader for want of their being
put

P R E F A C E.

put under their proper Heads in a regular Series in the precedent Treatise, so that the Reader must have applied to two several Volumes to be fully satisfied as to one Point of Practice; or else the greatest Part of the Precedents in the first Edition must have been wholly omitted in this.

T H E

THE
Attorney's Practice
 IN THE
Court of King's Bench.

Of the Jurisdiction of the Court.

THE Court of *King's Bench*, so Judges of the called, for that the King is sup- Court; posed by the Process of the Court to sit there, as He formerly did, consists of a Chief Justice created by Writ, and three other Judges *How created.* created by Letters Patent.

By the Statute 20 Ed. 3. c. 1. The King's Justices are to take no Fee but of the King.

And, By the Statute 12, 13 W. 3. c. 2. *Their Commis-* The Judges Commissions are to be made *sions Quam-* *Quamdiu bene se gesserint*, and their Salaries *diu bene se* ascertained and established: But upon the *gesserint.* Address of both Houses of Parliament they may be removed.

At the Common Law the Patents of the Judges were determined by the Demise of

the King; but by Statute 7, 8 *W. 3. c. 27.* § 21. and Statute 1 *Anne, c. 8.* § 1, 2. no Patent or Grant of any Office civil or military, shall cease, or be void, by reason of the Demise of the King; but every such Patent or Grant shall remain in force for the Space of Six Months next after such Demise, unless in the mean Time superseded or made void by the next and immediate Successor to the Crown.

Their Power. The Judges of this Court are the Sovereign Justices of Oyer and Terminer, Gaol-delivery, and of Eyre, Conservators of the Peace, and the Sovereign Coroners of the Land. 4 *Inst.* 73. 9 *R.* 118. b.

Jurisdiction of the Court. The Jurisdiction of the Court is general, and over all *England*; it hath Jurisdiction in Criminal and Civil Causes, and accordingly is divided into a Crown-side and a Plea-side.

Crown-side. The Crown-side originally takes Cognizance of all Treasons, Felonies, Misdemeanors tending to Breach of the Peace, or Oppression of the Subject, and of all Causes prosecuted by way of Indictment, Inquisition, or Information. Into this Court Indictments from all inferior Courts, and Orders of Sessions, &c. may be removed by *Certiorari*; and a Rescous may be returned by the Sheriff; Inquisitions of *Felo's de se*, or *per Infortunium Interfect*, are certified hither of course. Hence also issue Attachments for disobeying Rules or Orders of the Court, concerning which the Party shall be examined upon Oath to Interrogatories,

interrogatories, and if guilty, shall be fined, and if innocent, discharged.

This Court, being a supreme Court of Oyer and Terminer, Gaol-delivery, and Eyre, suspends the Power of all other Courts of the same Nature, in the same County wherein it sits, during the Sitting thereof. 4 *Inst.* 73.

On the Plea-side, it hath Conuſance in *Plea side.* all Pleas, by Bill of Debt, Detinue, Covenant, Account, and of all Actions on the Case, either upon Promise, scandalous Words, Nuisances, Trover and Conversion, or Penal Statutes, and all other personal Actions, Ejectment, &c. against any Person supposed to be in the Custody of the Marshal; and in all personal Actions, for or against any Officer, Minister, or Clerk of the Court. These Officers, if they are sued in any other Court, must have the Privilege of this Court in respect of their necessary Attendance here. This Court also may hold Plea, by original Writ out of *Chancery*, of all Trespasses on the Case, Trespasses *Quare vi & Armis*, Replevins, *Quare Impedit*, &c. but, as it is said, not in Debt, Detinue, Covenant or Account.

This Court may also regularly examine *May examine* all and all manner of Errors in Fact and in *Errors in other* Law, of all Judges and Justices in their *Courts*; Judgments, Processes and Proceedings in Courts of Record, not only in Pleas of the Crown, but in all Pleas real, personal and *except Exchequer* mixt (the Court of *Exchequer* excepted); quer.

May reverse it may reverse a Judgment given in the
Judgment of *King's Bench*, in Ireland.
the King's Bench in Ireland.

May punish
inferior Ma-
gistrates.

This Court may also punish any inferior Magistrate, or Officer of Justice, for wilful or corrupt Abuse of his Authority.

Grants Ha-
beas Corpus.

It grants *Habeas Corpus's* to relieve Persons wrongfully imprisoned; for upon Return of the Cause, they may be bailed or discharged.

Mandamus's
and Prohibi-
tions.

It grants *Mandamus's* to inferior Courts to command them to do their Duty, and *Prohibitions* to keep them within their proper Jurisdictions.

Writ of Error
from this
Court must be
returnable in
Parliament, if
by Original.
If by Bill, in
the Exche-
quer Cham-
ber.

The Errors of this Court cannot be reversed but in the House of Lords, except in some Cases, where the Action is first commenced in the Court of *King's Bench* (and not by Original out of *Chancery*) according to the Stat. 27 *Eliz. cap. 8.* by which Statute the Error may be examined in the *Exchequer Chamber*, but thence too it may be removed into Parliament.

Officers of the Court of King's Bench.

Crown-side.
Master of the
Crown Office.

ON the Crown-side. The King's Coroner and Attorney in the Court of *King's Bench*, commonly called the Clerk of the Crown, or Master of the Crown-Office in the Court of *King's Bench*, now *James Burrow, Esq;* holds his Place for Life by Letters Patent under the Great Seal of *Great Britain.*

His Constitu-
tion.

He

in the Court of King's Bench.

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He has the Custody of all the Records *Duty.* in his Office. He is to attend the Court when sitting, and at his Office every Afternoon in Term-Time, and every Morning and Afternoon in the Vacation; He issues out the Process of the Court on the Crown-side; Examines and reports all Matters refer'd to him by the Court, or by any Judge of the Court; enters the Award of the several Proceedings of the Court, by marking them upon the King's Rolls, and other Records, of which he has the Custody; taxes Costs, and settles Attornys Bills, when refer'd to him; nominates all special Jurys on the Crown-side; takes Recognizances from the Prosecutors of Informations; takes an Inquisition upon the Death of any Prisoner dying in the *King's Bench* Prison; and does all other Acts by himself, or his Substitutes, incident to the said Office, as are set forth under the several Accounts of the Duty of his Clerks and Substitutes aftermentioned.

This Office being granted to one *Vintner*, who was never exercised in the Office, the Judges held, that the Patent was void, and refused to admit him, for the Benefit of the King and his People, and after signified his Disability to the King, and recommended another to him as sufficient, whom the King *ore tenus* commanded them to admit and swear. *Dyer* 150.

The Secondary in the Crown-Office, *Secondary.*
Mr. Henry Masferman.

Appointment.

He is appointed by Writing under the Hand and Seal of the Clerk of the Crown.

Duty.

He is to make up a general Docket every Term of all the Proceedings on the Crown-side; to collect, number, and sort the Rolls; to make up every issuable Term an Estreat in Paper of all Fines, Amerciaments and Recognizances forfeited to the Crown, and to ingross and deliver the same over a Week before the End of the Term to the *Custos Brevium*; to draw up Paper-Books in Causes where there are special Pleadings; to give Certificates of Persons having taken the Oaths to the Government, and to assist the Clerk of the Crown in the Execution of his Office by attending the Court, to administer the Oaths taken to the Government, upon Trials at Bar on the Crown-side, upon the Arraignment of Prisoners, and upon the Day the Grand Jury receive their Charge; and by doing such other of the Duty of the Clerk of the Crown as he requires to be done by his Secondary.

*Clerks of the
Crown Office.*

The Clerks of the Clerk of the Crown, commonly called the Clerks of the Crown-Office, the said Mr. Henry Masterman, Mr. John Mathews, Mr. Henry Walrond, Mr. Henry Atborpe, Mr. Edmund Webb, Mr. John Bach, Mr. William Hughes, Mr. Christopher Burrow, and Mr. John Wace.

Appointment.

They are admitted in Writing by the Clerk of the Crown for the Time being, for their several and respective Circuits or Divisions, by his subscribing his Name to
an

in the Court of King's Bench.

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an Entry of an Appearance by each Clerk ; and also to a Particular of the Countys, Citys and Towns allotted to such Clerk for his Circuit or Division.

These Clerks in their respective Circuits *Duty.* or Divisions are to make Dockets of the Proceedings in every Cause arising within their several Circuits or Divisions ; to make a general Comptrolment or Abstract of the Pleadings or Proceedings ; to enter upon Record all their Proceedings at large ; to enrol Pardons, Grants of Deodands and Felons Goods, and to make out all special Writs and other Process issuing out of the said Court on the Crown-side.

The Clerk of the Rules on the Crown-*Clerk of the Rules on the Crown-side.* side, Mr. Henry Athorpe.

He is appointed for Life by Writing under the Hand and Seal of the Clerk of the Crown. *Appointment.*

He is to take Minutes of all the Rules *Duty.* on the Crown-side ; to draw up and enter the same in a Book kept in the said Office for that Purpose, and to make Copys thereof when required ; to file and copy Affidavits in Causes on the Crown-side, (which Duty formerly belonged to the Secondary) ; to make a Paper of all Causes that are set down for Argument, and to deliver a Copy to each Judge of the Court.

The Examiner of the Crown-Office, *Examiner of the Crown-Office.* Mr. Edmund Webb.

Appointment.

He is verbally appointed by the Clerk of the Crown.

Duty.

He files all Interrogatorys exhibited in the Court against Persons for Contempts, and examines them thereon, and makes Copys of such Interrogatorys, and the Examinations thereon when required, and inrols the same; and if the Parties do not attend to be examined, he certifys their Defaults.

Calendar Keeper.

The Calendar Keeper of the Crown-Office, Mr. *Edmund Webb*.

Appointment.

He holds his Office by verbal Appointment of the Clerk of the Crown.

Duty.

He is to make an Abstract every Term of the Indictments, Informations, Convictions and Inquisitions on the Rolls of the said Office, called the Bag-Rolls; to award Process against Coroners for Defects in their Inquisitions, and to amend such Defects.

Clerk of the Grand Jurys.

The Clerk of the Grand Jurys, Mr. *John Mathews*.

Appointment.

He holds his Place for Life by written Appointment under the Hand of the Clerk of the Crown.

His Duty is to make out a Precept to the Sheriff of *Middlesex* to summon the Grand Jurys; to call over the Jurys, to record their several Appearances, Defaults, and their being sworn; to make out Warrants to the High Constables within the Hundred of *Offulton*, directing them to summon their petit Constables to appear before the

Grand

in the Court of King's Bench.

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Grand Jury of that Hundred to make their Presentments; to call over the Petty Constables within the said Hundred, and to mark their several Appearances, and file such Presentments as they shall make; and draw and ingross Indictments on such of them as are indictable.

On the Plea-side is,

The Office of Chief Clerk, who is stiled in *Plea-side*.
the Records of the Court *Capitalis Clericus* Chief Clerk.
Domini Regis ad Placita in Curia ipsius
Domini Regis coram ipso Rege irrotulandus
Assignatus, is now exercised by John Anthony, Esq; and Mr. William Bizge.

This Office has immemorially been granted- *Appointment*.
ed for Life or Lives by the Chief Justice of this Court for the Time being.

The Duty of this Officer is to issue out *Duty*.
all the Process of the Court on the Plea-side, or in Causes between Party and Party, where the Proceedings are by Bill; to attend the Court wherever the same is held; to record and enter the Rules and Orders of the Court; to inrol the Pleadings and Judgments of the Court; to file *Postea*s and Writs of Error, and all special and common Bails; to keep Remembrances of all Writs and Records of Judgments, and to do such Acts by himself or Substitutes, as are after set forth to be done by his Clerks and Substitutes aftermentioned.
1 *Cb. Cases* 20.

The

Secondary.

The Secondary, or Deputy to the Chief Clerk, now *Samuel Clarke, Esq;*

Appointment.

He is verbally appointed by the Chief Clerk.

Duty.

He assists the Chief Clerk in the Execution of his Office, by attending the Court wherever the same is held; and after the Rising of the Court he attends at his Office in the *Temple* every Afternoon in Term-Time, and every Morning and Afternoon in the Vacation, to sign Judgments, and to examine all Matters refer'd to him by the Court, and to make his Report thereon to the Court; to tax Costs and Attornys Bills, when refer'd to him; to take the Acknowledgment in Court of all Deeds to be inrolled, all Bails justified in Court, Affidavits sworn in Court; and to charge the Marshal with the Custody of all Persons brought into Court by *Habeas Corpus*; to swear Attornys in open Court, and cause their Admissions to be inrolled; to discharge Recognizances of Bail upon the Defendant's Surrender to the Custody of the Marshal; to nominate special Jurys; to record the Verdicts of the Jurys upon Trials at Bar; to draw up special Verdicts found upon such Trials, and to make Certificates of all Judgments to be registered in the Countys of *Middlesex* and *York*.

He has the Custody of all Money paid into Court, and for the keeping thereof is paid 20 s. for every Hundred Pounds, and after that Rate for every greater or lesser Sum;

in the Court of King's Bench.

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Sum; and for every Sum under 10*l.* he is paid 2*s.* *Pas. 5 Jac. 1.*

But this Duty is now performed by the Signer of the Writs, as his Deputy.

The Clerk of the Rules, now Mr. *James Clerk of the Rules.*
Mundy.

He holds his Place for Life by Appointment in Writing under the Hand and Seal of the Chief Clerk. *Appointment.*

He is to attend the Court, and take *Duty.* Minutes of the Rules and Orders made by the Court in Civil Actions between Party and Party, and to draw up the same, and make Copys thereof when required; and to file and copy all Petitions and Affidavits on the Civil Side, and to draw and ingross Assignments of the Estate and Effects of poor Prisoners discharged by an Act of Parliament made for the Relief of Debtors, with respect to the Imprisonment of their Persons.

The Clerks of the Paper, now Mr. *Ed- Clerks of the Paper.*
ward Benton, and Mr. *Robert New.*

They hold this Office by Writing under *Appointment.* the Hand and Seal of the Chief Clerk, for their Lives and the Life of the longer Liver of them.

They attend the Court at *Westminster Duty.* every Day during the Sitting thereof, and at the *King's Bench* Office every Afternoon in Term-Time, they read the Rules of Court, Affidavits, Records, Deeds, Libels, Suggestions, and other Matters on the Plea-

side of the Court: All special Pleadings on the Plea-side of the Court, in Causes by Bill, are left with the Clerks of the Paper, who make Copies of such special Pleadings, and when Issue is joined thereon, make up the same into Paper-Books, and set down all Causes to be argued in Court on Writs of Error and Demurrers, or other special Matters, and deliver a Copy thereof to the Judges. These Officers also claim the Copying of all special Pleadings, and making up the Paper-Books where the Proceedings are by original Writ; and in *Michaelmas* Term 1734. the Court determined the Right with them; but it is said they had anciently nothing to do in such Cases; and they do not now claim such Right on *Scire Facias*, Writs of Error, and *Audita Querela*, which two last are always Proceedings by original Writ. 1 *Vent.* 296. 2 *Mod.* 95.

Attorneys not to deliver or receive any special Plea before put into the Office of the Clerk of the Paper.

Copy to be made and signed by the Clerk of the Paper.

No Attorney or Clerk attending here in Court shall deliver to any Attorney or Clerk attending here in Court, or to any other Person, or shall receive from any Attorney or Clerk attending here in Court, or from any other Person, any special Plea that ought to be put into the Office of the Clerk of the Paper, or Copy of the same Plea before the Plea is put into the Office of the Clerk of the Paper; and such Copy, after the Plea is put in, shall be made by a Clerk attending in the said Office of the Clerk of the Paper, and signed with the Hand of one of the Clerks there attending: Penalty for the first Offence 10 s. to be paid to

in the Court of King's Bench.

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to the Box, for the Use of the Poor ; for the second Offence 20 s. and for the third Offence, to be expelled the Court. *Trin. Jac. 1. Trin. 16 Car. 2. Mich. 2 W. 3 M.*

Note ; Mr. Benton sets down Causes in Hilary and Easter Terms, Mr. New in Trinity and Michaelmas Terms.

Clerk of the Dockets, Commitments, *Clerk of the and Satisfactions, now Mr. Martin Lantrow. Dockets.*

He holds his Office for Life by Appointment. *Appointment.*
ment under the Hand and Seal of the Chief Clerk.

He makes and keeps an alphabetical *Duty.*
Docket of the Judgments, and all other Entries upon Record in the said Court on the Plea-side, and enters Commitments and Satisfactions.

The Clerk of the Declarations, now Mr. *Clerk of the Ralph Day, Declarations.*

Is appointed for Life by Writing under *Appointment.*
the Hand and Seal of the Chief Clerk.

His Duty is to receive, file and pye all *Duty.*
Declarations and Bills in the said Court ; to shew the Files to the Filacers, Clerks, and Attorneys of the Court ; to grant Certificates to Prisoners to enable them to apply for their Discharges ; to attend at *Westminster*, or on a Judge of the Court, with the Records in his Custody, when required ; and to attend at the *King's Bench* Office for the Dispatch of the said Business.

The

The Clerks, Filacers, and Attornys of the Court are to pay to this Officer for receiving, filing, and keeping the Bills and Declarations 2 s. at the End of every Term. And if any of the Clerks, Filacers, or Attornys shall refuse to pay the same on Request, they may be suspended from the Privilege of their Practice, at the Discretion of the Chief Clerk or Secondary.
Mich. 15. Pasch. 19 Car. 2.

*Clerk of the
Common Bails,
&c.*

The Clerk of the Common Bails, Estreats, and *Posteas*, now Mr. *Charles Haddock*.

Appointment. He holds his Office for Life by Appointment under the Hand and Seal of the Chief Clerk.

Duty.

He files all Common Bails, makes out Certificates to the Marshal on the filing Common Bails for Prisoners on Orders for their Discharge; marks *Deliberatur* on *Posteas*, estreats all Amerciaments set by the Court, and administers the Oath taken of the Service of Writs according to the late Act of Parliament.

*Signer of the
Writs.*

The Signer of the Writs, Mr. *John Hawly*,

Appointment.

He holds his Place by Parol Appointment of the Chief Clerk.

Duty.

His Duty is to sign all signable Writs, and to enter the Remembrance of them on Rolls of Parchment; to take and file Affidavits to hold to Bail; to receive and deliver out Writs of Error and *Certiorari*, and to enter them in a Book; to file Writs and
 special

Special Bails; to make Copys of Writs and Affidavits, and to attend the Judges when required.

The Clerk of the Treasury, and *Custos Clerk of the Brevium & Recordorum* of the Court of *Treasury*. *King's Bench*, now *Beversham Filmer, Esq;* and Mr. *Theodore Johnson*.

The Office of Clerk of the Treasury and *Custos Brevium & Recordorum*, formerly called the Office of *Custos Brevium & Recordorum*, is an antient Office, and is an Office for Life, at the Disposal of the Lord Chief Justice of the Court for the Time being.

Angl. ff. *PRO eo quod Offic. Clerici Thesaurar. & Warrant. & Custod. Record. Dom. Regis & Brevium Cur. Dom. Regis coram ipso Rege co'it. vocat. Bancus Regis apud Westm. remanen. in Domo Thesaurar. Dom. Regis pertinen. cur. ill. cum omnibus feod. proficuis & commoditat. adinde pertinen. de jure pertin. ordini & dispositioni Capitalis Justic. ejusdem cur. pro tempore existen. ut inciden. offic. suo ad intentionem quod eadem offic. suppleantur per perit. & sufficien. personas exercere eadem; Ordinat. est die sabbati prox. post Crast. Ascensionis Dom. isto eodem Termino per totam cur. hic per & cum consensu per dilecti & fidelis Concilarii Dom. Regis Johan. Popham Milit. Capitalis Justic. Dom. Regis ad pl'ita coram ipso Rege tenend. quod imperpetuum post hac fu'it Officium quod vocabitur Officium Thesaurar.*

Thesaurar. de Banco Regis quod h'ebit pro termino vitæ ut pertinen. adinde omnia quæ sunt aut præantea fuerunt in dispositione prædicti Capitalis Justic. ut pertinen. eidem offic. sive Officiis except. Warrant. Attorn. factur. Record. de Nisi Prius in Com. Midd. & transcript. & certification. super br'ia Error. & reception. & filation. de les Queriturs & Attachiamen. in eadem Cur. & Custod. Sigill. pro bill. Midd. & conservat. Record. de attinctur. cum feod. adinde pertinen. Et quod posthac imperpetuum fuer' officiar. exercere offic. ill. præd. Thesaurar. qui imperpetuum vocabitur Clericus Thesaurar. de Banco Regis, qui h'ebit & gaudebit pro termino vitæ suæ tot. Exercic. feod. profic. & commoditat. pertinen. aut usa capiend. cum aut pro eodem (Except. feod. & profic. ill. præantea except.) Quod quidem officium Clerici Thesaurar. cum feod. & profic. adinde pertinen. ut prædicitur semper disponetur per prædictum Capitaalem Justic. pro tempore existen. prout idem vacuum devenerit tal. idon. person. qual. idem capitalis Justic. adinde no'iabit & assignabit pro termino vitæ ejusdem personæ sic no'iand. & assignand. quæ quidem persona sic no'iand. & assignand. Jurat. fu'it in cur. fore inde officiar. congruenter & h'ebit pro termino vitæ suæ reception. & custod. omnium Record. & br'ium infra eandum cur. (Except. Record. de Attinctur. Warrant. Attorn. les Queriturs & Attachiamen. præantea Except.) Et h'ebit factur. omnium Record. de Nisi Prius Exemplification. Cop. Record. & certification. inde in Cancellar. & Cameram Scacc. (Except. Record.

de Nisi Prius in Com. Midd. & transcript. & certificat. super b'ria de Error. Et quoad reception. Intration. & Custod. Warrant. Attorn. officiar. appunctuat. fuerit per capitalem Justic. pro tempore existen. ad exercend. idem qui imperpetuum vocabitur Clericus Warrant. quod quidem officium cum feod. & profic. adinde pertinen. semper fuerit ad dispositionem capitalis Justic. pro tempore existen. quæ quidem persona sic nominand. & assignand. h'ebit receptionem Intration. & custod. omnium Warrant Attorn. in eadem cur. Et quoad factur. Record. de Nisi Prius in Com. Midd. fuerit Officiar. ad exercend. idem qui imperpetuum vocabitur Clericus de Nisi Prius in Midd. Quod quidem offic. cum feod. & profic. adinde pertinen. semper fuerit ad dispositionem capitalis Justic. pro tempore existen. & tal. person. qual. capitalis Justic. adinde nominabit & assignabit Quæ quidem persona sic nominand. & assignand h'ebit. factur. omnium Record. de Nisi Prius de Midd. Et quoad transcript. & certification. super b'ria de error. officiar. fuerit ad exercend. idem qui semper vocabitur Clericus Error. Quod quidem offic. cum feod. & profic. adinde pertinen. semper fuerit ad dispositionem capitalis Justic. pro tempore existen tali person. qual. idem capitalis Justic. adinde nominabit & assignabit Quæ quidem person. sic nominand. & assignand. h'ebit factur. transcript. & certificat. super b'ria error. Et quoad custod. Record. de Attinctur. similiter ordinat. est per
Vol. I. C eandem

eandem cur. quod eadem custodientur in prædict. Dom. Thesaurar. in pluteo Anglice a *Pres* sub. duas seras & claves una earundem clavium custodiend. per capitalem Justic. ejusdem cur. pro tempore existen. Et altera per Attorn. Generalem Dom. Regis pro tempore existen. ea intention. quod eadem ad omnia tempora tuto custodientur Et quoad reception. & filacon. de les Queriturs & Attachiament. & Custod. sigill. Bill. de Midd. similiter ordinat. est quod fuerit officiar. ad exercend. & custodiend. eadem qui imperpetuum vocabitur *Custos de les Queriturs & Attachiament.* Quod quidem officium cum feod. & profic. adinde pertinen. semper disponetur per les puisne Justic. ejusdem cur. aut majorem numerum eorundem exercend. per talem personam & personas & in talibus modo & forma qual. iidem les puisne Justic. aut major numerus eorum limitabunt aut appunctuabunt. *Pas. 4 Jac. 1. Rot. 171.*

Appointment.

The late Lord *Raymond*, Chief Justice of this Court, by Writing under his Hand and Seal, constituted and appointed the said *Beversham Filmer* and *Theodore Johnson*, and the longer Liver of them, to be Clerk of the Treasury, and Keeper of all the King's Writs and Records of the said Court (except the making the Records of *Nisi Prius* in the County of *Middlesex*, and Transcripts and Certificates upon Writs of Error, and receiving and filing of *Queriturs* and Attachments

attachments in the same Court, and the keeping of the Records of Attainder); to hold for their Lives, and the Life of the longer Liver of them.

This Officer has the Possession of the *Duty*.

Treasury of the said Court at *Westminster*, and the Custody and Charge of the Records and Writs there; before the Beginning of every Term, he gives notice in Writing to one of the Judges, whose Turn it is to keep the *Essoin*, and attends the Judge at *Westminster*, with the other Officers of the Court for that Purpose; he likewise gives constant Attendance at the Treasury by himself or Deputy every Day in Term, during the sitting of the Court, and attends with the Keys of the Treasury in Vacation-Time, when required: In order to search for, and make Copies and Exemplifications of Records; and at the End of every issuable Term, he transcribes from the Records all Issues, Fines, Amerciaments and Recognizances forfeited, which are to be estreated into the Court of *Exchequer*; he transcribes and ingrosses from the Plea-Rolls all Issues that are to be tried by *Nisi Prius* in the said Court, and examines the same with the Plea-Roll (except as aforesaid) and after they are examined, seals them for Trial; and by his Clerks, he gives daily Attendance at his Office in *Gray's Inn* from the Time the Judges appoint their Circuits till the Circuits are over, for the transcribing, examining, and sealing the Records

of *Nisi Prius*, for all the Circuits in *England*, and for making Exemplifications if required.

Clerk of the Custos Brevium in the Inner and Upper Treasury. The Clerk of the *Custos Brevium* in the Inner and Upper Treasury, Mr. *William Tully*.

Appointment. He holds his Office by verbal Appointment from the Clerk of the Treasury.

Duty. He performs the Duty of the Clerk of the Treasury and *Custos Brevium* in the Inner and Upper Treasury.

Clerk of the Custos Brevium in the Outer Treasury. The Clerk of the *Custos Brevium* in the Outer Treasury, Mr. *John Sedgwick*.

Appointment. He is appointed by Writing under the Hand and Seal of the *Custos Brevium*.

Duty. He is to perform the Duty of the Clerk of the Treasury and *Custos Brevium* in the Outer Treasury, and has the filing and keeping the Plea-Rolls of the Plea-side of the six last Terms.

Clerks of Nisi Prius. The Clerks of *Nisi Prius*, the said Mr. *John Sedgwick*, and Mr. *William Tully*, Mr. *Capel Billingsley*, and Mr. — *Wallis*.

Appointment. They are verbally appointed by the *Custos Brevium*.

Duty. They are as Clerks to the *Custos Brevium*, to transcribe from the Plea-Rolls all Issues to be tried by *Nisi Prius* in the respective Circuits, and to ingross the *Jurata's* thereto; and

and to make Exemplifications thereof, if required.

The Signer of the Bills of *Middlesex*, *Signer of the Bills of Middlesex.*
Mr. David Lewis.

He is appointed in Writing by the three *Appointment.*
Puisne Judges.

He signs all Process by Bill of *Middlesex*, *Duty.*
keeps proper Books to enter the same, with Alphabets referring thereto, for Suitors and others to have Recourse to; administers the Oaths on Affidavits of the Causes of Action, and makes Alphabets referring thereto; makes Copies of such Affidavits, and gives Certificates when required.

The Clerk of the Errors, *Robert Clerk of the Errors.*
Salkeld, Esq;

Is verbally appointed by the Lord Chief *Appointment.*
Justice of the Court for the Time being.

It is his Duty to allow all Writs of Error *Duty.*
directed to the Lord Chief Justice of the said Court, and brought upon Judgments given by the said Court in Crown as well as in Civil Causes; and upon the Allowance thereof, to give Certificates, and to make out *Supersedeas's*, if desired, immediately where Bail is not required; but not till after the Bail is complete, where Bail is required; to attend the taking of Bail, to give Rules for better Bail; to attend the Judges in Court with the Bail-Book upon adding or justifying Bail; to draw up the Recognizances, and enter them on Record; to

give Rules to transcribe the Records, and indorse the Returns on Writs of Error; to make Transcripts of the Records; to get the Returns signed by the Lord Chief Justice; and to deliver such Writs of Error as are returnable in the *Exchequer Chamber*, with the Transcripts annexed to the Clerk of the Errors of the *Exchequer Chamber*; and if the Writ of Error be returnable in Parliament, to carry the Writ and Transcript to the House of Peers; and in Cases where the Records are not transcribed, he is to sign *Non Profs's* on such Writs of Error.

Sealer of the Writs.

The Sealer of the Writs.

His late Majesty King *Charles* the Second, by Letters Patent under the Great Seal of *England*, bearing Date the Second Day of *June* in the 25th Year of his late Majesty's Reign, granted to the Most Noble

Appointment.

Charles late Duke of *Cleveland*, then Earl of *Southampton*, and his Heirs Male in Default of Issue Male of Lord *George Fitzroy*, since deceased without Issue Male, the Receipt, Revenue, yearly Profit, Sum and Sums of Money, and other Commodities whatsoever arising and to become due and payable for the Sealing of any Writs, Exemplifications, or other Things whatsoever usually sealed, or that ought to be sealed with the Seal or Seals of his late Majesty's Courts of King's Bench or Common Pleas, or either of them; and all

the Offices of Receiver General of all the said Revenues, Profits, and Sums of Money, and Comptroller General of all Writs and other Things that shall or ought to be sealed with the said Seals or either of them, and of the Sums of Money payable for the same. The present Duke of Cleveland came into Possession of this Office by Virtue of the said Letters Patent on the Death of his Father, the said Charles Duke of Cleveland, and exercises the same by Mr. Robert Atkinson his Deputy.

l. s. d.

The Duke pays to the Crown }
a Fee - farm Rent of } 1653 14 0
413 l. 8 s. 6 d. every Term }
amounting yearly to }

The Seals Office is open.

Morning. Afternoon.

In Term Time, for a }
Fortnight after Hila- }
ry and Trinity Terms; } 9 to 11 3 to 6
and for a Week after }
Easter and Michael- }
mas Terms, from }

In Vacation Time, ex- }
cept as above, from } 9 to 11 3 to 5

The Clerk of the Lord Chief Justice *Clerk for tran-*
for transcribing from the Plea-Roll the *scribing Records*
Records of *Nisi prius*, in the County of *of Nisi Prius*
in Middlesex. Middlesex, is Mr. William Tully.

Appointment.

This Officer is appointed by the Chief Justice of the said Court for the Time being.

Duty.

His Duty is to transcribe from the Plea-Rolls the said Records of *Nisi Prius*, and to examine and seal the same; and to receive and file the Warrants of Attorney on the Plea-side of the Court.

Judges Clerks.

The Judges Clerks.

Appointment.

They are verbally appointed by the respective Judges whom they serve.

Duty.

And they are to attend their respective Judges for the more easy Dispatch of such Business as comes before them.

Filacers.

The Filacers are Mr. *Thomas Vaughan*, Mr. *Martin Lantrow*, and Mr. *Theodore Johnson*.

Appointment.

They hold their Places for their Lives by Appointment under the Hand and Seal of the Chief Justice of the Court for the Time being.

Duty.

Their Duty is to write on Parchment, and to enter on Record all Writs of *Capias*, *Alias*, *Pluries*, *Exigent*, *Proclamation*, and *Outlawry*, *Pone*, and *Distringas*, and all other Writs and Procefs founded on original Writs out of *Chancery*, returnable in this Court, and issued before the Defendant's Appearance; and to enter Bails and Appearances to such Procefs, and make Transcripts of Outlawrys into the *Exchequer*.

Mr.

Mr. *Vaughan* has acted as Filacer for the following Countys, Citys, and Towns.

Countys of *Bedford, Berks, Bucks, Cambridge, Cornwall, Cumberland, Dorset, Hereford, Hertford, Huntingdon, Kent, Leicester, Middlesex, Norfolk, Northampton, Nottingham, Northumberland, Oxford, Rutland, Salop, Southampton, Somerset, Stafford, Suffolk, Surry, Warwick, Westmoreland, Worcester, Wilts, and York.*

Citys of *Canterbury, Coventry, London, Mitchfield, Norwich, Worcester, and York.*

Towns of *Newcastle upon Tyne, Kingston upon Hull, Nottingham, Pool, and Southampton.*

Mr. *Martin Lantrow* Acts as Filacer for the County of *Devon*, City of *Exeter*, and County of the same City ; and

Mr. *Theodore Johnson* acts as Filacer for the Countys of *Essex* and *Monmouth.*

Usher and Cryer, (formerly called Cryer Usher and Porter) now Mr. *John Collier.* Usher and Cryer.

He holds his Office for Life by Letters Appointment. Patent under the Great Seal of Great Britain ; and executes his Office by two Deputy Ushers, and two Deputy Cryers, whom he appoints by Writing under his Hand and Seal for their Lives.

His Duty is to take Care that the Court Dutys Room be kept in order ; to attend the Judges Chamber at *Westminster*, the Court when sitting ; to make all Proclamations that

that are to be made therein, and to assist in administering Oaths taken in Court.

Deputy Court-Keeper, appointed by the Cryer and Usher : And,

The Keeper of *Westminster-Hall* appointed by the Warden of the *Fleet*. Both these Persons claim and take Fees from the Suitors of the Court on Trials at *Westminster* ; but neither of them are apprehended to be Officers of the Court, and consequently intitled to no Fees.

*Marshal of
the King's
Bench:*

*Stat. 8, 9 W.
3.*

The Marshal of the *King's Bench* Prison is *Richard Mullens*, Esq;

By an Act of Parliament made in the 8 and 9th Years of the Reign of King *William the Third*, Intitl'd '*An Act for the more effectual Relief of Creditors in Cases of Escapes, and for preventing Abuses in Prisons, and pretended privileged Places,*' It is among other Things enacted, 'That from and after the first Day of *May 1697* The Office of Marshal of the *King's Bench* Prison should be executed by the Person or Person to whom the Inheritance of the said Prison, Prison-House, Lands, Tenements, and other Hereditaments of the said Prison should then belong, in Person, or their sufficient Deputy or Deputies, for whom they should be answerable ; and the Profits and Inheritance be sequestered to make Satisfaction for Escapes, &c.

The

The said *Richard Mullens* is Lessee of *Appointment.*
the said Office for a certain Number of
Years, determinable on his Death, and
was admitted by the Court upon the said
Lease, and took an Oath of Office.

The Marshal is to have the Custody of *Duty.*
the Prison belonging to the said Court,
and of all the Prisoners committed to the
said Prison ; and he is to be answerable for
the Escape of any Prisoner out of his Custody ;
and by himself, or his Deputy, is to
attend the Court during the sitting thereof,
and on the Chief Justice whenever his
Lordship appears in his public Capacity.

The Deputy Marshal is Mr. *Francis Deputy Marshal.*
Priest.

He is verbally appointed by the said *Appointment.*
Mr. *Mullens*, who is Grantee of the said
Office of Deputy Marshal for Life.

The Clerk of the Papers of the *King's Clerk of the*
Bench Prison is Mr. *Henry Brown.* *Papers of the*
King's Bench
Prison.

He holds his Place for Life by *Appointment.*
Appointment in Writing under the Hands and Seals
of the Proprietors of the Inheritance of the
said Prison.

He enters the Commitments of all *Duty.*
Prisoners committed to the said Prison, and
all Declarations, and other Charges delivered
against them ; as also the *Committments*
of all Persons charged in Execution ;
he enters and returns all Writs of *Habeas*
Corpus directed to the Marshal, and makes
out

out all Copies of Causes and Certificates of Prisoners Detainer.

Chaplain.

Chaplain of the *King's Bench* Prison is the said Mr. *Henry Brown*.

Appointment.

He enjoys this Office for Life by Indenture under the Hands and Seals of the Proprietors of the Inheritance of the said Prison ;

And executes the said Office by the Reverend Dr. *William Friend*, at a yearly Salary of 10 l.

Clerk of the Day Rules.

The Clerk of the Day Rules of the *King's Bench* Prison is Mr. *John Chapman*.

Appointment.

He holds this Office for Life by like Appointment, from the said Proprietors.

Duty.

He is to attend the said Prison in Term-Time, and draw up and engross the Petitions of such Prisoners as petition the Court for Day-Rules ; and to carry or send them to *Westminster* at the sitting of the Court.

There are also two Turnkeys.

Tipstaffs.

The Four Tipstaffs, one attending on each Judge of the Court, are appointed for their respective Lives by Writings under the Hands and Seals of the Proprietors of the Inheritance of the said Prison.

Duty.

Their Duty is to attend on their respective Judges constantly in Court, and at their Chambers to execute the Warrants directed to them ; and to take Charge of every Prisoner committed in Court, or by

by a Judge at his Chambers ; and to deliver such Prisoner to the Marshal.

The Associate and Marshal for Trials by *Nisi Prius* in *London* and *Middlesex*, is *Associate and Marshal at Nisi Prius in Lon. & Mid.*
Mr. William Bigge.

He is verbally appointed by the Chief Justice of the Court for the Time being. *Appointment.*

He is to attend the Chief Justice at all Trials in *London* and *Middlesex* ; to enter *Duty.*

the Causes set down to be tried ; to enter the *Recipiatur*s ; to receive the Records and Writs, and to mark them in order of Precedency as they are brought in ; to call the Causes, to receive or withdraw Records and deliver out *Posteas*, and to mark out such Records as are left untried.

The Clerk of *Nisi Prius* for Trials in *London* and *Middlesex* is Mr. John Skinner. *Clerk of Nisi Prius in Lon. and Middlesex.*

This Officer is verbally appointed by the Chief Justice of the Court for the Time being. *Appointment.*

His Duty is to attend the Sitzings, to

call the Jurors, and mark them sworn on the Panel ; and in Cases of special Juries to mark the *Tales*, if there are any ; to inform on the Panel the Default of the Defendant's Appearance, and the Proclamations made on Informations and Indictments, and who appears to prosecute for the King ; to read the Records ; and all Deeds, and other written Evidence ; to take Notes of Accounts, and of such other Matters as the Lord Chief Justice shall direct ; to take Minutes of every special

cial Verdict, and draw up the same, and make Copys thereof ; and to take all other Verdicts ; to Indorse all Verdicts, and to Record all Nonsuits upon the Panel ; to draw up all Certificates to be signed by the Chief Justice ; to take Minutes of all Orders made at *Nisi Prius* ; to draw them up, and make Copys thereof ; and also to take all Recognizances entered into at such Sittings ; and since the late Act for the better regulating of Jurys, he draws the Names of the Persons returned to serve on Jurys, marks the Names of the Persons sworn on the Panel ; takes Notice of the Names of the Defaulters, and their Fines for not appearing, and of Persons excused or challenged.

Cryer at Nisi Prius in London and Middlesex.

The Cryer at *Nisi Prius* in London and Middlesex is Mr. Robert Jones.

Appointment.

This Officer is also verbally appointed by the Lord Chief Justice of the Court for the Time being.

Duty.

His Business is to attend the Court, and make the several Proclamations, and call and swear the Jurys, to swear the Bailiffs to prove Service on such of the Jurymen as are called, and do not attend ; to swear the Witnesses, and all other Persons who are to be examined in Court, and to open and adjourn the Court.

Sheriffs.

As to the Office of Sheriffs.

Every

Every Sheriff shall have his Deputy in ^{Sheriff to have} this Court to return and receive Writs; ^{his Deputy, and} and every Deputy yearly before ^{his Name and} Hilary ^{Place of Abode,} Term shall have his Name and Place of ^{set up in the} Residence in *London* or *Middlesex*, set and ^{Office.} continued up in Tables in the Office of the Secondary for that Purpose, upon Pain of the Under Sheriff's forfeiting for every Term that he shall make Default, the Sum of 20 l. *Hil. 21. Pas. 23 Car. 1. Mich. 1654. Pas. 15 Car. 2. Stat. 23 H. 6. c. 10.*

No Under Sheriff, or Bailiff of any ^{No Under She-} Liberty, ought to be admitted, during such ^{riff or Bailiff} his Employment, to practice as an Attor- ^{to practice as} ney, upon Pain of Exclusion from the Em- ^{Attorney.} ployment of an Attorney; and not to be re-admitted. *Stat. 1 H. 5. c. 4. Mich. 1654.*

If any Sheriff, Under Sheriff, or De- ^{Sheriff delay-} puty, or Bailiff of any Liberty, shall wil- ^{ing Execution,} lly delay the Execution of any Procefs, ^{liable to At-} or shall take or require any undue Fees for ^{tachment.} the same, or shall give Notice to the Deputy, thereby to frustrate the Execution of any Writ or Procefs, or having levied Money in Execution, shall detain the same in his Hand after the Return of the Writ, the Officer so offending is liable to an Attachment, Information, Commitment, or Fine, as the Case may require. *Mich. 1654.*

No Sheriff, or Sheriff's Deputy, shall ^{No Warrant} make or deliver, or suffer to be made or ^{before Writ} delivered, any Warrant or Warrants be- ^{sued out, or} fore the Writ or Writs be duly sued forth ^{any Blank} and ^{Warrant, to} be allowed.

and delivered to him; nor deliver, nor suffer to be delivered, any Blank Warrants to arrest or attach any Person. *Eaſt.* 15 *Car.* 2. *Stat.* 9 *W.* 3. c. 25. *Stat.* 6 *Geo.* 1. c. 21.

Copy of Inventory to be delivered on Request.

Every Under Sheriff ought, upon reasonable Notice given to him, to deliver a true Copy of the Inventory of any Goods taken by him upon a *Fi. Fa.* or *Elegit*, to the Party requiring the same, he paying for such Copy not exceeding 3 s. 4 d.

Sheriff's Fees in Executions.

The Sheriff is not to take for the serving any Extent or Execution upon the Body, Lands, or Goods of any Person, more than 12 d. for every 20 s. where the Sum exceedeth not 100 l. and 6 d. for every 20 s. above 100 l. that he shall levy and deliver in Execution, or take the Body in Execution for; upon Pain of forfeiting treble Damage to the Party, and 40 l. one Moiety to the King, the other to the Party who will sue for the same. *Stat.* 28 or 29 *Eliz.* c. 4. § 1. but not to extend to Citys or Towns corporate. — The Sheriff shall not take for executing any Writ of *Habere facias Possessionem* or *Seisinam* any greater Fee than 12 d. for every 20 s. of the yearly Value of any Lands, &c. whereof Possession or Seisin shall be given, where the Whole exceeds not the yearly Value of 100 l. and 6 d. for every 20 s. *per Annum* above the yearly Value of 100 l. *Stat.* 3 *Geo.* 1. c. 15. § 16. Poundage is not to be taken for executing any Writ of *Capias ad Satisfaciendum*, or on charging any

An Habere facias Possessionem.

any Person in Execution by Virtue of such Writ, for any greater Sum than the real Debt amounts to, which Sum the Plaintiff

Sum really due to be mark'd on the Writ.

to mark on the Back of the Writ before it be delivered to the Sheriff: Sheriff

Penalty on Sheriff taking greater Fees.

taking greater Fees to be adjudged guilty of Extortion, and on Conviction to forfeit

to the Party grieved treble Damage and double the Sum extorted, to be decreed by the Court out of which such Writ issued, on Complaint and Proof before the Court, in such summary Way as to them shall seem meet; and every Person so offending shall forfeit 200 l. one Moiety to the King, the other to such Person as shall sue in any Court at *Westminster* within 2 Years after the Offence. *Same Stat. § 17.*

Where the Sum exceeds 100 l. the Sheriff shall have 12 d. for every Pound of the first Hundred, and 6 d. for every other Pound over the 100 l. *Cro. Car. 209.*

His Poundage when the Sum exceeds 100 l.

The Proviso that this shall not extend to Citys or Towns corporate, is only to the intended for the executing of Judgments in the Courts of such Corporations, and not to the Sheriffs of Citys or Corporations for the executing Judgments out of Superior Courts. *Ib. Salk. 331.*

Extends not to Citys or Towns.

Tho' the Sheriff may have such Fees as are allowed by the Statute, he may not take a Bond for them; for under the Colour thereof he may so have double Fees. *Ib.*

May not take a Bond for his Fees.

Per Cur. The Usage has been, since the Stat. 28 *Eliz.* to take a Fee upon a Ca. Sa. Ca. Sa. Vol. I.

Fees due on a

D

and

and such a Fee is allowed to the Sheriff for his Trouble which he had in the Execution; and if there be a second Execution, (as where the Party dies in Execution, and a *Fi. Fa.*) he ought to have a Fee for that also. Rule *per Holt* C. J. An Action will lie for his Fee; for the Law permitting him to take it, makes it a Duty. *Shower* 363. *Salk.* 331.

Stat. of Eliz. misprinted.

This Stat. in the printed Books is mistaken; for the Roll is *Anno Eliz.* 28. and the Stat. is *Anno* 29. *Ib.* *Salk.* 331. *Raym.* 1.

This Statute does not extend to real Executions, but only to Executions in personal Actions; therefore does not extend to an *Habere facias Seisinam* or *Possessionem*. *Salk.* 331. *Sed vide antea Stat.* 3 *Geo.* 1.

Upon a *Ca. Sa.* the Sheriff shall have his Fees for the whole Debt. *Ib.*

Extends not to Executions on Stat. Merchant, &c.

The Statute does not extend to Executions upon Statute Merchants, Recognizances, &c. for the Act is to be understood where the Judgment *redditur in invitum*, and not by the voluntary Confession of the Party. *Ib.*

Fee on Elegit.

The Sheriff shall have the Fees for executing an *Elegit.* *Salk.* 333.

Sheriff to return Writs and bring in the Body 6 Days after Service of the Rule, or else Attachment.

The Court taking into Consideration the great Delays and Expences that attended the old Method of amercing Sheriffs for not returning Writs, and bringing into Court the Body of Defendants arrested by them, ordered, That for the future all Writs should be returned, and the Body of every such Defendant should be brought

brought into Court, within 6 Days next after Service of a Rule on the Under Sheriff for that Purpose ; and on Default thereof the Court will grant an Attachment against the Sheriff, without giving him a Day to shew Cause. *Trin. 5, 6 Geo. 2.*

By a Rule made 19 *Jac. 1.* taking *Judicial Writs* Notice, that it was a Query whether Ju- *to be executed*
dicial Writs issuing out of this Court could *by Sheriffs in*
be executed in the Countys of *Wales.* *Wales.* and
that diverse Precedents had been considered
by the Court, whereby it appeared to be
the constant Usage of the Court to issue
such Writs into those Countys: It is de-
clared, That all such Judicial Writs may be
decreed to, and ought to be executed by,
the Sheriffs of those Countys in such Man-
ner as Judicial Writs by the Sheriffs in
England. *Raym. 206. 1 Lev 294. 2. Keb.*
649, 657, 724. 2 Saund. 193.

And by a Rule made 21 *Car. 1.* it is *Sheriff of*
ordered, That the Sheriff of the County *Chelster to*
of *Chelster* shall return all Writs issuing out *return Writs*
of this Court directed to him, according *directed to him.*
to the Return of such Writs, on Pain of
forfeiting 50 l. *Raym. 171. 1 Sid. 407.*
2 Keb. 410, 464.

The Deputy Sheriffs, and all other Offi- *Deputy Sheriff*
cers of the Court, ought personally to appear *and other Of-*
before the Effoin-Day of every second Re- *ficers to attend*
turn of every Term, and continue there du- *the Court.*
ring the Residue of the Term. *Mich. 1654.*

If the Sheriff shall die before the Expi- *On Death of*
ration of his Year, or before he be super- *the Sheriff, the*
seded, the Under Sheriff shall nevertheless *Under Sheriff*
to act quoutq;
con-

continue in his Office and execute the same in the Name of the Deceased, till another Sheriff shall be appointed and sworn; and shall be answerable during the Interval, as the Sheriff would have been; and his Security and Pledges shall stand a Security to the King, and all Persons whatsoever, for the due performing the Office.
Stat. 3 Geo. I. c. 15. § 8.

Sheriff on Request and Cost of a Lord of a Franchise or Liberty, to appoint a Deputy to reside at some Place in or near the Franchise. The Sheriff of every Shire, being no City or Town made a Shire, within which there is any Franchise or Liberty, the Franchise or Lord whereof is intitled to the Return of Writs, shall (if required by such Lord) within one Month after such Request, nominate and appoint one or more Deputy or Deputys at the Costs of such Lord, to be resident at some Town or Place in or near such Franchise or Liberty, to be appointed by the Lord Chancellor and Chief Justices of B. R. and C. B. or one of them, hereby authorised to appoint such Town or Place, and to settle what Costs shall be paid therefore by such Lord; and

Place and Costs to be appointed and settled by Lord Chancellor, &c. such Deputy or Deputys shall reside at such Town or Place so to be appointed, and have Authority in the Sheriff's Name to receive and open all such Writs and issue Warrants Process (the Execution or Return whereof doth belong to the Lord of such Franchise or Liberty) and in the Name and under the Seal of the Sheriff to issue out such Warrant or Warrants to such Lord, as by Law is requisite for the due Execution of such Writ or Process; and such Deputy

Deputy to receive Writs, and in Name and under Seal of Sheriff to issue Warrants to the Lord of the Franchise. or

or Deputys is, and are required, on Tender of such Writ or Process, to receive and open the same, and issue such Warrant therein without Delay, in such Manner and Form as the Sheriff may or ought to do, without taking any further Fee ^{Taking no more than the accustomed Fees.} than now due or accustomed for such Warrant; on Pain, that every such Sheriff or Deputy, guilty of any wilful Neglect or Default, shall be punished as for ^{Punishment of Sheriff or Deputy making wilful neglect.} a Contempt of Court, and make Satisfaction to the Party damaged. *Stat. 13 Geo. 2.*

Officers on the Circuit.

Note the several Countys in *England* are ^{Circuits.} divided into six Circuits, *viz.*

The *Midland Circuit* containing the Countys of

<i>Northampton,</i>	<i>Derby,</i>
<i>Rutland,</i>	<i>Leicester,</i>
<i>Lincoln,</i>	<i>Warwick.</i>
<i>Nottingham,</i>	

The *Norfolk Circuit.*

<i>Bucks,</i>	<i>Cambridgeshire,</i>
<i>Bedford,</i>	<i>Norfolk,</i>
<i>Huntingdonsb.</i>	<i>Suffolk.</i>

The *Home Circuit.*

<i>Hertford,</i>	<i>Sussex,</i>
<i>Essex,</i>	<i>Surry.</i>
<i>Kent,</i>	

The *Oxford Circuit.*

<i>Berks,</i>	<i>Gloucester,</i>	
<i>Oxford,</i>	<i>Monmouth,</i>	
		<i>Hereford,</i>

The Attorney's Practice

Hereford,
Salop,

Stafford,
Worcester.

The Western Circuit.

Southamptonsh. Cornwall,
Wilts, Devonshire,
Dorset, Somerset.

The Northern Circuit.

Yorkshire, Cumberland,
Durham, Westmoreland,
Northumberland, Lancashire.

*Clerk of Af-
fize.*

*Antiquity of
the Office.*

The Office of Clerk of Assize is a very anti-ent Office, commencing doubtless at the same Time the Judges first went the Circuits: By the Stat. 13 Edw. 1. (*Ann. Dom. 1285.*) c. 30. § 2. it is provided, that the Justices of both Benches shall have in their Circuits Clerks to enrol all Pleas pleaded before them, like as they used to have in Times past.

This Office has always been granted for Life, by the Stat. 33 H. 8. c. 24. the Clerk of *Assize* is disabled from acting as Counsel within the Circuit whereof he is Clerk of Assize, during the Time of the Session of Assize or *Nisi Prius*.

His Duty.

The Clerk of the Assize has the Care and Custody of, and is answerable for, all the Records which properly belong to his Office. When the Circuits are appointed, he is to attend the Judges, and receive their Directions about the Times and Places of holding the Assizes in the respective Countys within his Circuit, to sue forth the several Commissions and Writs

Writs of Association for holding the same: To issue out Precepts thereupon; one upon the Commission of Assize, and another upon the Commission of Oyer and Terminer for every County in his Circuit, directed to the respective Sheriffs, in order for them to summon and return the several Jurys; which Precepts are first signed and sealed by the Judges, and then delivered to the several Sheriffs, to be by them executed for the Purpose aforesaid. He is to travel and attend upon this Occasion with all his under Officers, and carry along with him the Commissions, and such of the public Books and Records belonging to his Circuit, as the current Business of the Circuit may require. He is to receive and file the Returns of all Writs and Precepts, all Inquisitions in Murder and Manslaughter, all Appeals and all Recognizances, Informations and Examinations taken before and returned by the Justices of the Peace of the several Countys within his Circuit, to enter and Docket all the Causes on the Crown-Side. When the Prisoners are called to the Bar to take their Trials, it is the Duty of the Clerk of Assize to make an Abstract of the Bill against every Prisoner with the Witnesses Names, for the Use and better Information of the Judge before he proceeds to the Trial, and also to enter upon a Roll the Panel of the Jurors who try the Prisoner, and the Name of the Prisoner tried by the Jurors, and the Judgment

ment given by the Court, are, or ought to be, always entered by the Clerk of the Assize upon Record as soon as conveniently may be after the Assizes are ended. It is also his Duty to make the Calendars, and deliver Copys thereof to the Judges of Assize, in which all the Judgments and Orders of the Court are entered, which Calendars are signed by the Judges, and afterwards delivered to the respective Sheriffs as their Warrants and Authority for putting the said Judgments and Orders in Execution. Upon Indictments and Presentments for Trespasses, Misdemeanors, and other Offences where the Partys are not in Custody, or upon Bail, it is his Duty to issue out Process against the several Defendants, in order to compel an Appearance, and make them answer the Charge alledged against them respectively in all such Indictments and Presentments, that the King, in case the Party be presented, may have his Fine. At the Close of every Assizes he is to call over all Persons bound by Recognizance, and to mark the several Discharges and Receipts thereon ; and after the Assizes are over, it is his Business to draw up an *Escheat* of the Recognizances, Fines, Amerciaments, and Issues forfeited or imposed in his Circuit at that Assize ; and after the Judges have been attended with, and have signed the same, it is to be ingrossed on a Parchment Roll, and returned into the Exchequer upon Oath.

The

in the Court of King's Bench.

41

The Clerks of Assize, their Deputys or Assistants, are personally to appear with their *Posteas* on the first Day of *Easter* and *Michaelmas* Terms. *Mich. 1654.*

The Associate on the Circuit is an Off-Associate on cer holding under the Appointment of the the Circuit. Clerk of Assize.

It is his Duty to attend on the *Nisi* His Duty. *Prius* Side of the Court, to receive from the Marshal all the Records, to mark upon the Panel in every Cause that is tried the Jurors who appear and are sworn, to read all Exhibits, and to take and record Verdicts, to draw up and enter the Orders, and to return the *Posteas*.

The Clerk of the Arraigns likewise holds Clerk of the his Place by the Appointment of the Clerk Arraigns. of Assize.

It is the Duty of the Clerk of the Ar-His Duty. raigns to attend on the Crown-Side of the Court, to read the Commissions, to call over the Justices, and all other Officers and Ministers who are obliged to attend the Court, to receive the Constables Presentments, to call over the Grand Jury and petty Jury, to arraign the Prisoners, &c.

The Clerk of the Indictments is an Of-Clerk of the Indicer also appointed by the Clerk of Af- dictments. fize.

It is his Duty to attend every Circuit at the Place where the Clerk of the Af- size

size usually keeps his Office, and to draw and ingross all Bills of Indictment which are to be preferred and laid before the Grand Jury in each respective County upon the Circuit.

Judges Marshal.

The Judge's Marshal on the Circuit holds his Office by Parol Appointment of the Judge during Pleasure.

Duty.

The Marshal is to attend in Court, and at the Judge's Lodgings during the Time of the Assizes, to receive the Records and Writs of *Nisi Prius* between Party and Party, and to marshal and enter the same, together with the Traverses on the Crown-Side, between the King and the Party, in a Book kept for that Purpose; and from such Book to make out a Paper or Schedule of the said Causes, for the Perusal and Inspection of the Judges, the Counsel and Attorneys. He also opens the Records, and has the Custody of them till the Issues joined are respectively tried. He also enters *Ne recipiatur*; which Entry is a Notice to the Partys, that such Cause is not to be entered or tried at that Assize; and when Causes are not tried, it is his Business to take Care of the Records till called for by the Partys. It is also his Business, since the late Act of Parliament, for regulating Jurys to receive from the Sheriffs at the Beginning of the Assize in every County, the Names of the Jury between Party and Party, and to roll them up and put them

them into the Box as directed by the said Act, and to take the Care and Custody of the said Box when the Names are put in, and to take Care of the Ballots, pursuant to the Directions of the said Act.

The Judge's Cryer on the Circuit holds *Judges Cryer.* his Office, during Pleasure, by Parol Appointment of the Judge.

It is his Duty to make the several Pro-*His Duty.* clamations, to call over all the Justices of the Peace, Mayors, Bailives of Corporations and Boroughs, Coroners, Constables, to be sworn to their Presentments, Bailives, and other Officers; to call the Grand Jury; to call and swear the petty Jurys; to swear the Bailives, to prove service on such Jury-Men as are called and do not appear between Party and Party; to swear Witnesses, and all other Persons who are to be examined in Court; to adjourn and open the Court.

Judges Clerk and Steward on the Circuit. These Offices are executed by one *Judges Clerk and Steward.* and the same Person, who is verbally appointed thereto by the Judge, to hold during Pleasure.

It is his Duty to draw up and ingross *His Duty.* on Parchment the Admission of Infants to sue by their next Friend, or defend by Guardian; to read over to the Partys the Contents of all Fines and Warrants of Attorney, for suffering common Recoverys taken or acknowledged before the Judge of

of Affize, and to write the Captions thereon, and to keep Duplicates thereof signed by the Party acknowledging the same, and to file them in due order as they are taken. He usually attends the Judge as Train-bearer, not only to and from the Court but on all other Occasions that require the Judge to go in his Robes. It is his Duty to pay all Bills, and keep and make up the Account of the Circuit.

Tipstaff.

The Chief Justice of this Court, and the Chief Justice of the Court of *Common Pleas*, are respectively in the Circuit attended by a Tipstaff.

As to the Appointment of the Tipstaff of this Court, *vide antea*, fol. 28. The Tipstaffs of the Court of *Common Pleas* are appointed by the Warden of the *Fleet Prison* to hold for their respective Lives.

Judges Servants.

The Judges Servants claim Fees on the Circuit : Their Duty I am a Stranger to, but as Officer and Fees are relative Terms I have put them under the Head of Officers on the Circuit.

Sheriff's Duty on the Circuit.

The Sheriff of each County is to wait upon the Judges from their Lodgings to the Court and back again ; to return Writs of *Venire*, *Habeas Corpora*, *Distingas*, and other Proceſs ; to return Tales-Men to receive the Calendar from the Clerk of Affize, and to ſee that the ſeveral Judges

men

ments pronounced by the Court in capital Cases be duly put in Execution.

The Coroners of each County are to ^{Coroners.} attend the Assizes, and to deliver to the Clerk of the Assize, all Inquisitions of Murder and Manslaughter, and all Inquisitions of *Felons de se, per Infortunum interfect. ex Visitatione Dei*, and all Inquisitions whereby any Deodands are found, in order that the Clerk of Assize may transmit them to the Coroner and Attorney of his Majesty's Court of *King's Bench*, to the End that Process may issue for bringing in the Deodand. He is likewise to attend to return the *Venire, Habeas Corpora, Distringas*, and other Process in the Suit, where the Sheriff is related to either Party, or interested in the Suit.

Attorneys of the Court.

ATTORNEYS should procure themselves to be admitted into some of ^{Attorneys to be admitted in some Inns of Court, &c.} the Inns of Court, or *Chancery*, and take Chambers there (if they may be had) or Lodgings near the said Inns, and leave Notice in Writing with the Butler or Porter of the Inn whereof they are admitted, where their Lodgings are (except such ^{Exception.} persons as are Inhabitants or Housekeepers

ers in *London, Westminster, Southwark,* or the Suburbs thereof, and Liberty of the Tower of *London,* and *St. Katharine's* there,) and such who are sworn Attorneys of any Courts, within the said City, Towns and Libertys. *Mich. 1654. Mich. 3 Annæ.*

No one to act as Attorney, unless admitted, &c.

No Person can practice as an Attorney of this Court, in his own or another's Name, unless he be sworn, admitted and inrolled, pursuant to the Direction of the Act made 2 *Geo. 2. c.* — for the better Regulation of Attorneys and Solicitors, continued by *Stat. 12 Geo. 2. to 24 June 1748.* and from thence to the End of the next Session of Parliament.

None to be admitted, unless served a Clerkship of 5 Years.

No Person shall act as Attorney, unless he shall have been bound by Contract in Writing to serve as a Clerk for five Years to an Attorney, duly admitted as by the Act is directed, and shall have continued for five Years in such Service; and shall be examined, sworn, admitted, and inrolled, as by the said Act is directed.

If his Master dies in the 5 Years, may serve the Remainder of his Time with another.

If the Attorney, to whom such Person shall be bound, shall happen to die before the Expiration of the five Years, or such Contract shall by mutual Consent be vacated, or such Clerk be discharged by Rule of Court before the Expiration of the five Years, then such Person shall by Contract in Writing serve as Clerk to some other Attorney during the Residue of the said five Years. *Stat. 2 Geo. 2.*

An Attorney, before he is admitted, is to take the following Oath. *Stat. 2 Geo. 2.*

I A. B. do swear, That I will truly and Attorneys honestly demean myself in the Practice of Oath. an Attorney, according to the best of my Knowledge and Ability.

So help me G O D.

A Quaker having served a Clerkship *Quaker may be admitted* with an Attorney, and qualified as by the *Statute 2 Geo. 2.* is directed, and taking *an Attorney.* his solemn Affirmation instead of the Oath thereby directed, may be admitted and enrolled as an Attorney. *Stat. 12 Geo. 2.*

Before the *Stat. Westm. 2. c. 10.* all Attorneys were made by Letters Patent under the Great Seal, commanding the Justices to admit such particular Persons to be Attorneys for the Partys respectively.

An Attorney duly admitted in this *Attorney, with* Court may, with the Consent of any At- *Consent of At-* torney of any other Court of Law (such *torney of an-* Consent being in Writing, and signed by *other Court,* such Attorney) and in the Name of such *may practice in such Court.* Attorney, prosecute and defend any Action or Proceeding in such Court. *Stat. 2 Geo. 2.*

No Attorney shall have more than *No Attorney to have more* two Clerks at the same Time bound by *than 2 Clerks* Contract in Writing, to serve him as Clerk. *at one Time.* *Same Stat.*

*Attorneys to
be inrolled.*

Chief Clerk without Fee to inrol the Names of the Attorneys admitted in alphabetical Order, whereto all Persons may have Access without Fee or Reward. *Same Stat.*

*Attorney per-
mitting one
that is not an
Attorney to
practice in his
Name, disa-
bled to prac-
tice.*

An Attorney knowingly and willingly permitting any Person to practice in his Name, not being a sworn Attorney, and being thereof lawfully convicted, shall from thenceforth be disabled from practising as an Attorney. *Same Stat.*

*Penalty on
Persons prac-
tising, not be-
ing admitted.*

Any Person in his own Name, or the Name of any other, practising as Attorney, in Expectation of any Fee, Gain, or Reward, without being admitted and inrolled an Attorney, shall forfeit 50 *l.* to the Use of any who shall prosecute for the same within 12 Months after the Offence committed, together with treble Costs, and be made incapable to maintain any Suit for any Fees, Reward or Disbursements on Account of the Business so done by him as an Attorney. *Stat. 2 Geo. 2.*

*Attorney being
a Prisoner, not
to Practice.*

No Attorney, who shall be a Prisoner, shall in his own Name, or in the Name of any other, commence or prosecute any Action or Suit (except Suits commenced before his Confinement) and all the Proceedings in such Action or Suit shall be void and of no Effect, and such Attorney shall be struck out of the Roll, and incapacitated from acting as an Attorney; and shall also the Attorney permitting him to use his Name. *Stat. 12 Geo. 2.*

Attorney

Attorneys dismissed by one Court from their Practice, for Misdemeanors, ought not (after Certificate) to be admitted to practice in another Court. *Mich. 1654.*

Attorney dismissed one Court not to practice in another.

One cannot force an Attorney to prosecute or defend a Suit against his Will.

Cannot force an Attorney to act against his Will.

None shall retain an Attorney in a Cause wherein an Attorney is formerly retained, without first acquainting the Attorney that was first retained, or the Secondary in the Office.

One cannot retain an Attorney in a Cause where another was formerly retained, without Notice.

One cannot change his Attorney in a Suit without good Cause, and the Leave of the Court; and the Attorney newly coming in is to take Notice, at his Peril, of the Rules whereunto the former Attorney was liable, had he continued. *Mich. 1654. Farest. 30.*

Nor change Attorney without good Cause, and Leave of the Court.

The Attorney ought to be paid his Fees before any other Person shall be admitted to proceed in the Cause in which he was formerly retained as an Attorney, or he be compelled to deliver up his Client's Writings and Papers to such new Attorney, or his Client.

Attorney to be paid his Fees before another permitted to proceed in the Cause.

If the Attorney for the Plaintiff or the Defendant die, pending the Suit, and the Party whose Attorney is dead hath Notice given him of it, and will not retain another Attorney to prosecute for him, the Attorney for the other Party may proceed, and is not bound to hinder his Client.

If Attorney in a Cause die, the Attorney on the other side may proceed, if the Party whose Attorney is dead have Notice.

ent's Cause for it. *Jenk. 179. Style's Pract. Reg. 13.*

His Warrant to confess a Judgment revocable only by Death, and when — A Warrant of Attorney to confess a Judgment is not revocable, and the Court will give Leave to enter up the Judgment, though the Party should have revoked it ; but it is determinable by the Partys Death ; yet if the Party dies in the Vacation, the Attorney may in the Vacation enter up the Judgment as of the Precedent Term, and it will be as good a Judgment as of the Term at the Common Law ; though upon the Stat. of Frauds in respect to Purchasers, it is only a Judgment from the Signing : In this Case the Attorney should bring in the Roll before the Effoin-Day of the subsequent Term, *1 Salk. 87. Raym. 69. Latch 8.*

Judgment signed after Defendant's Death.

If *A.* gives a Warrant of Attorney to confess a Judgment to *B.* at 8 in the Morning, and at 10 the same Day *A.* died before the Judgment was signed by the Secondary, yet the Judgment was held regular. *Raym. 18.*

Retainer by an Attorney of C. P. of an Attorney of this Court, a sufficient Warrant. A Retainer of an Attorney of the Common Pleas by an Attorney of the upper Bench, and *e converso*, shall be a sufficient Excuse to the Attorney so retained, acting according to such Retainer, and the Attorney so retaining without Warrant from the Party, shall be liable to Punishment. *Mich. 1654.*

The Attorneys ought to be governed in the ordinary Manner of their Practice by the Master of the Office ; and if any Difference arises between them, he is to hear both Partys, and to order the Matters in Difference between them, and they are to submit to him ; for the Court is not to be troubled but in extraordinary and difficult Matters of Proceeding.

No Under sheriff ought to be an Attorney ; for it is often the Cause of increasing of Suits, and also a Hindrance in Dispatch of Clients Causes, by Reason of his double Capacity, and Interest and great Power he may have in the County where he is Under Sheriff ; it is also against the Statute 1 H. 5. c. 4. Mich. 1654.

If an Attorney absents himself from the Court, and don't give his Attendance for a whole Year together, he loses his Privilege. Ridley and Carr, Pasch. 1656.

An Attorney although he doth not practice, yet he shall have his Privilege so long as he continues an Attorney upon Record. Lutw. 1667.

An Attorney is not bound to discover and give in Evidence the Contents of a Deed shewed to him by his Client, nor any Letters received from his Client, nor any Instructions given him by his Client, unless he will.

Attorneys paying to the Clerk of the Court Declarations his Fee of 2 s. a Term, may at any time, not being prevented by Rule of Court for that Purpose, file or search the Files gratis.

the Files for any Declarations, without paying any thing for the same.

To attend the Court on Motions.

Upon Notice given to any Attorney of this Court to attend the Court upon any Motion to be made, if he shall neglect to appear, he shall pay 10 s. to the Box. *Paf. 1656. Paf. 14 Car. 2.*

To attend the Master on References.

Every Attorney of this Court shall personally attend the Master, at times by him to be prefixed, upon Notice thereof to him given, to examine Causes that shall be in Reference before the Master; and every Attorney making Default, shall for such Default forfeit 10 s. *Hil 15 Car. 2.*

Undertaking to appear, compellable thereto.

An Attorney accepting a Warrant, or subscribing a Process, Declaration, or Warrant, to appear, shall be compelled to cause an Appearance to be entered, or liable to an Attachment, or put out of the Roll, as the Case requires, and the Party shall not be received to countermand such Appearance after his Retainer. *Mich. 1654. 1 Salk. 87. 6 Mod. 86. Comb. 299. 6 Mod. 42. 1 Salk. 86. 6 Mod. 16. 5 Mod. 205. Comb. 2.*

Not to be Lessee in Ejectment or Bail.

For the Prevention of Maintenance and Brocage, no Attorney shall be Lessee in an Ejectment, *Mich. 1654.* No Attorney of this or any other Court to be Bail in any Action depending in this Court. *Mich. 1654. Mich. 14 Geo. 2.*

Where may practice in an inferior Court.

An Attorney of this or any other of the Courts at *Westminster* may practice in any inferior Court, unless excluded by Charter or Prescription. *1 Vent. 11. 1 Sid. 410. 2 Keb. 477. 1 Mod. 23. Cro. Car. Prowse's Case, 15 Car. 1. Darcy's Case, Stat. 6 Geo. 2.*

A Man

A Man cannot be Attorney on both Sides, *Can't be Attorney on both Sides.* even though both Partys consent. *Faresl. 47.*

The Authority of an Attorney continues *How long his Authority continues.* until Judgment; and for a Year and a Day afterwards, to sue out Execution, and for a longer Time, if the Execution be continued.

The Consent of the Attorney will many *Attorney's Consent binds his Client.* times bind his Principal, as in 1 *Salk. 86.* *Action sur Assumpsit*; Plea *Non Assumpsit infra Sex Annos*; Replication and Judgment for want of a Rejoinder: The Plaintiff's Attorney consented to wave the Judgment, and accept the Rejoinder; but the Plaintiff afterwards being informed of the Matter, ordered his Attorney to insist on the Judgment, which he accordingly did: Whereupon the Court on Motion held the Attorney to what he had consented, which bound the Plaintiff, of whom they could take no Notice. *Carth. 412. 1 Salk. 70.* The Attorney's Consent to stand to an Arbitration, will bind his Client; but 8 *Co. 58. Cro. Jac. 211.* An Attorney cannot enter a *Re- Retraxit*, because that is a perpetual Bar, and *must be in propria persona.* in Nature of a Release, and therefore must be *in propria persona*, 1 *Salk. 89.* He may remit Damages.

An Attorney of this Court is not to be *His Privilege.* sued in any other Court, nor held to special Bail in any Action, and may sue by Attachment of Privilege.

But an Attorney shall not have his Privilege in the King's Suit, 1 *Roll. Abr. 274.* Nor in a real Action. 1 *Sand. 67.*

The Attorney's Practice

Nor when he sues or is sued in *auter droit*, or Executor or Administrator. *Hob.* 177. 1 *Salk.* 2, 7. *Latch* 199.

Nor in an Action, where he joins, or is joined with other, 1 *Ventr.* 298. *Dyer* 277. *Godb.* 10. 2 *Roll. Abr.* 275.

Nor in an Action at the Suit of another Attorney. 2 *Mod.* 298. 2 *Roll. Abr.* 274.

Nor unless there be the same Remedy in this Court, as where Money is attached in his Hands by foreign Attachments in London. 1 *Sand.* 67. 2 *Keb.* 346. *Comb.* 427.

If an Attorney of this Court be chosen a Constable, he may have a Writ of Privilege for his Discharge, even though there be a special Custom for Persons to be chosen into that Office, in respect of their Estates, or otherwise, for no Custom shall be intended to be more antient than that of this Court. *Cro. Car.* 283, 389. *Noy* 112. *March* 30. 1 *Mod.* 13. 1 *Ventris* 16, 29. 2 *Keb.* 477, 508. 1 *Lev.* 265. *Raym.* 179.

An Attorney of the Common Pleas was sued in this Court in an Action *Qui tam*, &c. on a penal Statute, and was allowed his Privilege, for it was at the Suit of the Party. 1. He might be nonsuited. 2. He might pray a *Tales* without a Warrant from the Attorney General. 3. It should not determine by the Demise of the King. *Skin.* 549.

Motion, That an Attorney going to *Ireland*, might put in special Bail, denied. 1 *Mod.* 19.

Con-

Conuſance of Pleas is not to be granted againſt an Attorney of this Court, if he ſues by Writ of Privilege. An Act of Parliament cannot take away his Privilege without expreſs Words. *Litt. Rep.* 304. *3 Lev.* 149.

Male Practice or Misbehaviour in an Attorney may be examined in a ſummary Way, and is puniſhable either by Attachment, Commitment, or being ſtruck out of the Roll.

An Attorney was committed for ſuing out a Bill of *Middleſex*, againſt the Counteſs of *Huntingdon*. *1 Vent.* 298.

Of the Four Terms.

THE Terms are certain Portions of the Year, in which only the King's Juſtices hold Plea in the High Temporal Courts, of Cauſes belonging to their Jurisdiction in the Place thereto assigned, according to the antient Rules and Customs of the Kingdom. *Definition.*

The Word *Terminus* is of the Greek *τερμα*, which ſignifyeth the Bound, End, or Limit of a thing, here particularly of the Time for Law Matters.

The Space between the Terms is named Vacation, *à Vacando*, as being Leasure from Law Buſineſs.

The Word *Term* is ſometimes uſed for the whole Space, including the Day of Eſſoin, Exception, and Return' *Brevium*,
E 4 some-

sometimes and most commonly excluding these from the first Sitting of the Judges in full Court (which is the first Day of Appearance) and this is called *full Term* by the Statute 32 Hen. 8. c. 21. and 16 Car. 1. c. 6. as though the Part precedent were but Semi-term, Puisne-term, or *introitus termini*.

Essoin-Day.

The *Essoin-Day* from *Essoine*, or *Exonnie*, Excuse, a kind of Imparlance, *Licentia Interloquendi*, or a Craving of longer Time, is in Law the first Day of Term; but in common Parlance, the first Sitting of the Judges in full Court is the first Day of Term; so where a Promise was made on the Day after the *Essoin-Day* of *Trinity Term*, to deliver an Indenture before the End of *Trinity Term* then next ensuing, it was held, that it should be delivered that Term, and not that Time twelve Months. *Bishop and Harecourt*, 1 Cro. 310. a Judgment relates to the *Essoin-Day*, which is the first Day in Law, and not to the *Quarto die post*, which is but a Day of Grace; *Ideo* a Judgment of *Hilary Term* had Precedence of a Statute acknowledged on the 22d Day of *January*. *Stanford v. Cooper*, 3 Cro. 73. vid. *Dyer* 209, 361. 34 H. 6. fo. 20. 22 H. 7. fo. 7.

In *Easter Term* all the *Essoin-Days* of every Return are *Sundays*, except the last, which is *In Crastino Ascensionis Domini*; and so are all the *Essoin-Days* of *Trinity Term*, except the first, which is *In Crastino Sanctæ Trinitatis*.

All the Returns in the four Terms ^{Of the Re-} are either *In Crastino*, *In Octabis*, *In Quin-* turns.
dena, or *Quindecim dies*; *In Tres Septi-*
manas, *In Unum Mensem*, or *In Quinque*
Septimanas, of their respective Feasts.
Every *Octave* and *Quindena* is inclusive
of the first and eighth or fifteenth Day,
alk. 626. 6 Mod. 250. The *Octave* is the
same Day Week with its Feast-Day; the
Quindena the same Day Fortnight; the *Tres*
Septimanas the same Day three Weeks; the
Unum Mensem the same Day four Weeks;
and the *Quinque Septimanas* the same Day
five Weeks with its Feast-Day.

Of the Days of the Month, on which the
Returns of the moveable Terms are, the
Court is not obliged to take Notice. 1 Lev.
196.

The Day three Weeks after *Michaelmas* *Michaelmas*
Day, is the Effoin-Day of *Michaelmas Term*.
Term; and the fourth Day after inclu-
sive, is the first Day of the Term, which is
always the three and twentieth Day of Oc-
tober, if it be not *Sunday*, and if *Sunday*, the
four and twentieth, and endeth on the
eight and twentieth of *November*, if not
Sunday, but if *Sunday* the nine and twen-
tieth.

It appears by a Fine taken at *Norwich*,
18 H. 3. that this Term was then holden
there, and began within the Octaves of St.
Michael; for the Note of it is, *Hæc est fina-*
lis Concordia facta in Curia Domini Regis
apud Norwicum die Martis proximo post festum
Sancti Michaelis anno regni Regis Henrici
fili

fili Regis Johannis 18. Coram Tho. de Mulet, Rob. de Lexinte, Olivero, &c. I observe, that the *Tuesday* next after *St. Michael* can (at the farthest) be but the seventh Day after it; and yet it must be a Day within the Octave, whereas before the Statute 16 Car. 1. c. 6. the Term was not till the third Day after the Octaves; that Statute has taken away two Returns from this Term, viz. *in Octabis Sancti Michaelis*, and *a die Sancti Michaelis in quindecim Dies*.

Hilary Term. Hilary Term begins the three and twentieth Day of *January*, if not *Sunday*, and then on the four and twentieth, and is always that Day eight Weeks on which *Michaelmas* Term ended; its Effoin-Day is *January* the twentieth, and it ends the twelfth Day of *February*, if not *Sunday*, and then on the next Day, which always happens on the same Day of the Week on which *Michaelmas* Term began.

Hilary Term formerly began at *Octabis Epiphaniæ*, that is, on the 13th Day of *January*, and ended at the *Saturday* next before *Septuagesima*.

Easter Term. Easter Term begins the *Wednesday* Fortnight after *Easter Day*, its Effoin-Day being the *Sunday* before, but held on the *Monday*, and ends on *Monday* before *Whitsunday*.

Easter Term formerly began at *Octabis Paschæ*, and ended before the Vigil of the Ascension.

Trinity Term. Trinity Term begins the *Friday* after *Trinity Sunday*, although that Day should happen to be the Feast of *St. John the Baptist*,
on

on the twenty-fourth of *June*, for the Term must begin on the *Friday* next after *Corpus Christi* Day, by Statute 32 *H. 8.* 21. its *Effoin-Day* is the *Monday* before, it ends on the *Wednesday* Fortnight after it begins, unless it happens to be on the twenty-fourth of *June*, and then on the Day after; and the Term must be adjourned on the *Tuesday* to the *Thursday* following.

Before the Statute 51 *Hen. 3.* Stat. 2. this Term began in *Octab. Pentecostes*, which is the Day after *Trinity Sunday*; but by that Statute this Term appears to have had the following Returns, viz. 1. In the *Utas Trinitatis*; 2. In *Quindena Trinitatis*; 3. In *Crastino* of *St. John Baptist*; 4. In the *Utas* of *St. John Baptist*; and, 5. in *Quindena* of *St. John Baptist*; so that this Term then ended about the 12th of *July*. The Statute 32 *Hen. 8.* c. 21. gave this Term its former Beginning, and enacted, that it should have only four common Days of Return, viz. 1. In *Crastino Sanctæ Trinitatis* (which is the same Day with *In Octabis Pentecostes*); 2. In *Octabis Sanctæ Trinitatis*; 3. In *Quindena Sanctæ Trinitatis*; And, 4. *A die Sanctæ Trinitatis in Tres Septimanas*, taking away the Returns of *In Crastino Sancti Johannis Baptistæ*, *Octabis Sancti Johannis Baptistæ* & *Quindena Sancti Johannis Baptistæ*; and also enacted, that this Term should yearly begin on the *Monday* after *Trinity Sunday*, for the keeping *Essoins*, *Profers*, *Returns*, &c. and that the *full Term* should yearly begin and take its

The Attorney's Practice

Commencement the Friday next after *Corpus Christi* Day; and that the fourth Day of Return, called a *Die Sanctæ Trinitatis* in *Tres Septimanas*, should have his Return with the fourth Day, as is accustomed in other like Days of Return.

Michaelmas

Michaelmas Term contains Five Weeks, and Two Days, and hath

Michaelmas Term contains Five Weeks, and Two Days, and hath Six Returns.

By ORIGINAL.

By BILL.

- | | | |
|---|-------------|---|
| 1. From the Day of St. Michael in three Weeks. | On (Monday) | next after three Weeks from the Day of St. Michael. |
| 2. From the Day of St. Michael in one Month. | On (|) next after one Month from the Day of St. Michael. |
| 3. On the Morrow of all <i>All Souls</i> . | On (|) next after the Morrow of <i>All Souls</i> . |
| 4. On the Morrow of St. <i>Martin</i> . | On (|) next after the Morrow of St. <i>Martin</i> . |
| 5. On the Octave of St. <i>Martin</i> . | On (|) next after the Octave of St. <i>Martin</i> . |
| 6. From the Day of St. <i>Martin</i> in fifteen Days. | On (|) next after fifteen Days from the Day of St. <i>Martin</i> . |

Hilary

in the Court of King's Bench.

Hilary Term contains Three compleat Weeks, and hath Four Returns.

1. On the Octave of St. <i>Hilary</i> .	On () next after the Octave of St. <i>Hilary</i> .
2. From the Day of St. <i>Hilary</i> in fifteen Days.	On () next after fifteen Days from the Day of St. <i>Hilary</i> .
3. On the Morrow of the Purification of the Blessed <i>Mary</i> .	On () next after the Morrow of the Purification of the Blessed <i>Virgin Mary</i> .
4. On the Octave of the Purification of the Blessed <i>Mary</i> .	On () next after the Octave of the Purification of the Blessed <i>Virgin Mary</i> .

Easter

Easter Term contains Three weeks, and Six Days, and hath

*Easter Term contains Three Weeks, and Six Days, and hath
Five Returns.*

1. From <i>Easter</i> Day in fifteen Days.	On () next after fifteen Days from the Day of <i>Easter</i> .
2. From <i>Easter</i> Day in three Weeks.	On () next after three Weeks from the Day of <i>Easter</i> .
3. From <i>Easter</i> Day in one Month.	On () next after one Month. from the Day of <i>Easter</i> .
4. From <i>Easter</i> Day in five Weeks.	On () next after five Weeks from the Day of <i>Easter</i> .
5. On the Morrow of the Ascension of our Lord.	On () next after the Morrow of the Ascension of our Lord.

Trinity

Trinity Term contains Twenty Days, and hath Four Returns.

1. On the Morrow of the Holy Trinity.	On (<i>Friday</i>) next after the Morrow of the Holy Trinity.
2. On the Octave of the Holy Trinity.	On () next after the Octave of the Holy Trinity.
3. From the Day of the Holy Trinity in fifteen Days.	On () next after fifteen Days from the Day of the Holy Trinity.
4. From the Day of the Holy Trinity in three Weeks.	On (<i>Wednesday</i>) next after three Weeks from the Day of the Holy Trinity.

In these Terms the following Days are *Dies non Juridici*.
Dies non Juridici: The first and second Days of November, being *All Saints* and *All Souls*, in *Michaelmas* Term; the second Day of February, being the Feast of the Purification, in *Hilary* Term; Ascension-Day in *Easter* Term; and the twenty-fourth Day of June, being the Feast of St. John the Baptist, if it happens in *Trinity* Term, (unless it happens on Friday next after *Trinity Sunday*, for then it is *Dies Juridicus* by the Statute 32 H. 8. 21.) and Writs returnable on any of these Days are not good.

The eleventh Day of November, being the Feast of St. Martin in *Michaelmas* Term, cannot be said to be in or upon any Return; and if a Writ be made returnable on that Day, it must be returnable on Thursday the Feast of St. Martin, or any other Day of the Week it falls on: And if returnable the Day after, it must be on Friday the Morrow of St. Martin; for between the Morrow of *All Souls*, which is the third Day of November, and the Morrow of St. Martin, which is the twelfth Day of November, one Day of the Week falls out twice; so that if the Morrow of *All Souls* falls on a Monday, the next Day is Tuesday next after the Morrow of *All Souls*, and the next Tuesday will be Tuesday the Feast of St. Martin, and so yearly, according to the Day of the Week on which the Feast of St. Martin happens.

Of the Feast of St. Martin in Michaelmas Term.

Sed vide Stat. 16 Car. 1. 6.

Process by Bill
returnable on
a Day certain.

Every Bill of *Middlesex*, Writ of *Latitat*, *Alias Capias*, *Pluries Capias*, *Habeas Corpus*, *Super Cepi Corpus*, *Habeas Corpus ad faciend' & recipiend'*, and all other Process thereupon, both before and after Judgment, must be returnable on a Day certain; as on *Monday* next after three Weeks from the Day of *St. Michael*, and may be returnable on an *Essoin*, or general Return-Day in the Term-Time; but then the Day of the Week must be expressed, as on *Friday* in one Month from the Day of *St. Michael*.

By Original on
a general Return.

All Writs of *Capias*, *Alias*, and *Pluries*, grounded upon Originals out of *Chancery*, and all Writs subsequent thereto, to the *Outlawry*, Writs of *Scire Facias*, *Quare Executionem non* & *ad audiendum Errores*, upon Writs of Error out of the *Common Pleas*, or other inferior Courts, Writs of *Capias ad Satisfaciendum*, *Fieri Facias*, and other Judicial Writs after Judgment affirmed, *Retorno Habendo*, *Capias in Withernam*, and all other Writs and Process grounded upon any *Recordari facias Loquelam*, *Audita Querela*, *Accedas ad Curiam*, *Capias si Laicus*, and every other Judicial Writ out of *Chancery*, must not be made returnable on a certain Day, but on a general Return or *Essoin-Day*, *Ubicunque*, as from the Day of *St. Michael* in three Weeks, wheresoever we shall then be in *England*. There must be fifteen Days between the *Teste* and Return of such Writs, except as follows.

Stat. 16 Car.
1.

By Statute 16 Car. 1. c. 6. § 7. It is enacted, that the Return *Crastino Ascensionis Domini* shall be a good Return, notwithstanding

withstanding there be not fifteen Days between the *Quarto die* of *Crastino Ascensionis Domini*, and the Effoin-Days of the Return of *Crastino Sanctæ Trinitatis*. And § 8. That all Writs and Process in personal Actions having Day from *Tres Michaelis* until *Crastino Animarum*, shall be good and effectual in Law, notwithstanding there be not fifteen Days betwixt the *Quarto Die* of the said *tres Septimanas Sancti Michaelis*, and the Days of Effoin of *Crastino Animarum*.

By the second Statute of 13 Car. 2. c. 2. Stat. 13 Car. § 7. It is enacted, That in all personal Actions, and all Actions of Ejectment depending by Original Writ, there shall not need to be fifteen Days between the Teste and Return of any Writ or Writs of *Venire Facias*, *Habeas Corpora Juratorum*, or *Distringas Juratores*, *Fieri Facias*, or *Capias ad Satisfaciendum*, and that the Want thereof shall not be Error. But, § 8. not to extend to any Writ of *Capias ad Satisfaciendum*, whereon an Exigent after Judgment is to be awarded, nor to a *Capias ad Satisfaciendum* against the Defendant, in order to make the Bail liable.

Of Writs.

THE usual leading Process when the *Leading Process* Action is first commenced in this *cess when by* Court, and not by Original out of Chancery, nor brought from any inferior Court by *Writ of Error*, *Habeas Corpus*, *Certiorari*, *Bill*.

or *Recordari facias Loquelam*, is a Bill of *Middlesex*; which you are to make out in this Form:

A Bill of
Middlesex.

Richard
Roe, or John
Doe, are put
in when there
is but one De-
fendant, to
make it agree-
able to the
printed Blanks,
which are al-
ways in the
Plural Num-
ber.

Middlesex, to wit, It is commanded to the Sheriff, That he take *William Cave*, and *Richard Roe*, if they may be found in his Bailiwick, and keep them safely, so that he may have their Bodys before the Lord the King at *Westminster*, on *Monday* next after three Weeks from the Day of *St. Michael*, to answer *Ferdinando Hoare* in a Plea of *Trespas*; and that he have there then this Precept,

By Bill,

Anthony and Bigge.

Put the Attorney's Name, and the Day it was signed, on the Back. And then write a Note for the Office thus;

Middlesex, to wit, Bill for *Ferdinando Hoare* against *William Cave*, *Trespas*, returnable on *Monday* after three Weeks from the Day of *St. Michael*.

Robert Richardson,
20th *October* 1738.

You pay Six Pence in Term, and Ten Pence in Vacation, for Signing it.

in the Court of King's Bench.

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If the Defendant is to be held to Bail, you are to add in the Writ after the Word *Trespass*, and before the Word *and*, an *Acetiam Billa*, in one of the following Forms, according to the Nature of the Case.

As also to a Bill of the said *F. H.* against *Debt.* the said *W. C.* for One Hundred Pounds of Debt, according to the Custom of the Court of the Lord the King, before the King himself to be exhibited.

As also to a Bill of the said *F. H.* against *Assumpsit.* the said *W. C.* for 100 *l.* upon Promise, according to, &c.

For taking and carrying away the Goods *Trespass.* and Chattels of the said *F. H.* to his Damage of 50 *l.* according to, &c.

For detaining the Goods and Chattels *Detinue.* of the said *J. H.* to the Value of 60 *l.* according to, &c.

For converting and disposing of the Goods *Trover.* and Chattels of the said *F. H.* to the Value of 40 *l.*

For Breach of Covenant to the Damage *Covenant.* of the said *F. H.* of 50 *l.* according to, &c.

If it be an Action of Debt upon a Recognizance of Bail or mesne Process, there must be inserted the following *Acetiam Billa* in the Process [though the Defendant is only to be served with a Copy of such Process, and is not to be arrested upon it] otherwise the Defendant or his Attorney shall not be bound to accept of a Declara-

tion in Debt upon such Recognizance.
Easter 15 Geo. 2.

Debt upon a
 Recognizance
 of Bail.

And also to a Bill of the said *F. H.* against the said *W. C.* in a Plea of Debt upon Recognizance; according to the Custom of the Court of our Lord the King before the King himself, to be exhibited, &c.

Several De-
 fendants,

If there be several Defendants you say,
 To answer *C. D.* of a Plea of Trespass, and also the several Bills of the said *C. D.* against the said *A. B.* for 50*l.* upon Promise, and against the said *E. F.* for 30*l.* upon Promise, according to, &c.

If the Defendant can't be taken on the first Precept, you make out an *Alias*; and if not on that, a *Pluries* Bill.

The Alias Bill begins thus;

Alias Bill.

Middlesex, to wit, It is commanded to the Sheriff, as it was before commanded to him, that he take, &c.

The Pluries Bill begins thus;

Pluries Bill.

Middlesex, to wit, It is commanded to the Sheriff, as it has been oftentimes commanded to him, that, &c.

Bill of Mid-
 dlesex to the
 Coroners.

Middlesex, to wit, It is commanded to the Coroners of the County of *Middlesex*, that they take *Philip Roger, D.* and *John L.* if they shall be found in their County, and keep them safely, so that they may have their Bodys before our Lord

in the Court of King's Bench.

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Lord the King at *Westminster*, on
next after

to answer *R. W.* Esq; and *W. S.* Esq;
Sheriff of the County aforesaid, of a
Plea of Trespass, and that they have
there then this Precept,

By Bill,

Anthony and Bigge.

If the Defendant lives in any Liberty,
where the Sheriff of *Middlesex* may not en-
ter, get the Sheriff to direct his Warrant
to the Bailiff of that Liberty; and if the
Bailiff of the Liberty does not execute it,
you must get the Sheriff to return a *Man-
davi Ballivo*; and then you make out a
Non Omittas Bill of *Middlesex*, whereupon
the Sheriff may enter the Liberty, and ar-
rest the Defendant.

The Form of a Non Omittas Bill.

Middlesex, to wit, It is commanded to the Non Omittas
Sheriff, That he do not omit by rea- Bill of Mid-
son of any Liberty in his County; dlesex.
but that he take *A. B.* if he may be
found in his Bailiwick, and keep him
safely, so that he may have his Body
before the Lord the King at *Westmin-
ster*, on next after
to answer to *C. D.* of a Plea of Tres-
pass, and that he have there then this
Precept,

By Bill,

Anthony and Bigge.

F 4

For

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For each of these you make out a proper Note for the Office, and you pay for signing the *Alias* and *Pluries* but Two Pence each, either in Term or Vacation; and for the *Non Omittas*, as on a first Bill.

If the Defendant lives in any other County than *Middlesex*, (except as after mentioned) you make out a *Latitat*, which is in Nature of a *Testatum* Bill of *Middlesex*.

The Form of a Latitat.

Latitat.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: Whereas, we lately commanded our Sheriff of *Middlesex*, That he should take *A. B.* if he might be found in his Bailiwick, and him safely keep, so that he should have his Body before us at *Westminster*, at a certain Day now past, to answer *C. D.* in a Plea of *Trespas*, * and also to a Bill of the said *C. D.* against the said *A. B.* for One Hundred Pounds upon Promise, according to the Custom of our Court before us to be exhibited; And our said Sheriff of *Middlesex* at that Day returned to us, That the aforesaid *A. B.* is not found in his Bailiwick; whereupon on the Behalf of the aforesaid *C. D.* it is sufficiently attested in our Court before us, That the aforesaid *A. B.* doth run up and down, and

secret

* Suit the Accrion Bill to the Nature of the Action as before directed, fo. 69 if the Defendant is to be held to Bail; or it be on a Recognizance of Bail, otherwise you leave it out, *Trespas* being sufficient.

secret himself in your County : Therefore we command you, that you take him, if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on next after
to answer to the aforesaid
C. D. of the Plea and Bill aforesaid ;
and that you have there then this
Writ. Witness Sir *William Lee*,
Knight, at *Westminster*, the
Day of in the Twelfth
Year of our Reign.

Anthony and Bigge.

The Note for the Office.

*London, to wit, Latitat for C. D. against
A. B. Trespafs, and also for 100*l.* upon
Promise.*

Ret.

Anth. Beckwith.
20th October 1738.

If the Defendant is not to be found on
the *Latitat*, you sue out an *Alias Capias* ;
and if not on that, a *Pluries Capias*.

The Form of an Alias Capias.

GEORGE the Second, by the Grace *Alias Capias*
of God, of Great Britain, France and
Ireland, King, Defender of the Faith,
&c. To the Sheriffs of London, Greet-
ing :

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ing: We command you, as we have before commanded you, that you take *A. B.* if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on next after to answer *C. D.* of a Plea of Trespass, and also to a Bill of the said *C. D.* against the said *A. B.* for 100*l.* upon Promise, according to the Custom of our Court before us to be exhibited; and have there then this Writ. Witness Sir *William Lee*, Knight, at *Westminster*, the in the Twelfth of our Reign.

Anthony and Bigge.

Pluries.

The *Pluries Capias* is the same, only instead of the Words,

“As we have before commanded you;” say,

“As we have many times commanded you.”

If the Sheriff cannot execute your *Latitat*, *Alias*, or *Pluries*, by Means of any Liberty he may not enter, upon the Return of a *Mandavi Ballive*, as before, you make out a *Non Omittas*.

The Form of a Non Omittas.

Non Omittas.
Latitat.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland, King, Defender of the Faith, &c.

Etc. To the Sheriff of N. Greeting:
We command you, that you do not
omit, by reason of any Liberty in
your County, but that you take R. S.
if he shall be found in your Baili-
wic, and keep him safely, so that you
may have his Body before us at *West-*
minster, on next after
to answer *W. A.* of a Plea of 'Tres-
pass, and also to a Bill of the said *W.*
against the said R. for Five hundred
Pounds of Debt, according to the
Custom of our Court, before us, to
be exhibited; and have there then this
Writ. Witness Sir *William Lee*, Knight,
at *Westminster*, the Day of
 in the
Year of our Reign.

Anthony and Bigge.

In each of these Cases you make out a
proper Note for the Office in manner be-
fore directed; you pay 2 s. 6 d. for Sign-
ing the *Latitat*, whereof 1 s. 10 d. is for
the chief Clerk, and Two Pence a-piece to
each of the four Judges, and you pay 7 d.
for the Seal; you pay nothing for Signing
either the *Alias*, *Pluries*, or *Non Omittas*.

A *Latitat* is now in Force in *Wales*, and
a *Latitat* to any of the Cinque Ports must
be directed To the Constable of Dover Castle,
or his Deputy, whether the Cinque Port be in
Kent or *Sussex*. A *Latitat* may be executed in
County Palatine, and is in the following
Form.

GEORGE

*A Latitat to
the County Pa-
latine of Che-
ster.*

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland*, King, Defender of the Faith, &c. To our Chamberlain of our County Palatine of *Chester*, or to his Deputy there; Greeting: Whereas we lately commanded our Sheriff of *Middlesex*, that he should take *A. B.* if he should be found in his Bailiwick, and that he should keep him safely, so that he might have his Body before us at *Westminster* at a certain Day now past, to answer *C. D.* of a Plea of Trespass; and also to a certain Bill of the said *C.* against *A.* for one hundred Pounds upon Promise, according to the Custom of our Court, before us to be exhibited; and our said Sheriff at that Day returned to us, that the said *A.* was not found in his Bailiwick: Whereupon, on the Behalf of the said *C.* in our said Court before us, it is sufficiently attested, that the said *A.* lurks and secretes himself in our said County Palatine of *Chester*; Therefore we command you, that by our Writ under the Seal of our said County Palatine to be duly made, and to be directed to the Sheriff of the said County Palatine, you Command the said Sheriff, that he take the said *A.* if he shall be found in his Bailiwick, and keep him safely, so that he may have his Body before us at *Westminster*, on
next after

to answer the said C. B. of
the Plea and Bill aforesaid; and have
there then this Writ. Witness Sir
William Lee, Knight, at *Westminster*,
the Day of
in the Year of our Reign.

Anthony and Bigge.

If to the City of *Chester*, say to the She-
riffs of the City of *Chester*.

If to the County Palatine of *Lancaster*, *Lancaster*.
The Directions are thus: *To our Chancellor of*
our County Palatine of Lancaster, or to his
Deputy there, Greeting.

If to the County Palatine of *Durham*, *Durham*.
Thus: *To the Reverend Father* by
Divine Providence, Bishop of Durham, or to
his Deputy there, Greeting: And instead of
saying, under the Seal of our said County Pa-
latine, say, under the Seal of your Bishop-
rick.

A Man may take out a *Latitat* before the Money is due; but the Party must not be arrested upon it before; and this differs from an Original, which, if it bears *Teste* before the Money is due, is abatable; but the *Latitat* is only to bring the Defendant in Custody, that the Plaintiff may declare against him by Bill, and after that the Proceedings upon the *Latitat* cease. 1 *Ventr.*

No Writ with the Clause of *Acetiam* is to be sued forth against any Heir, Executor or Admini-
Latitat may be tested before Plaintiff's Cause of Action.
No Acetiam. Writ against an Heir, Executor, or Administrator.

Administrator, so as to oblige him to put in special Bail. *Mich. 15 Car. 2.*

When Bail by an Executor or Administrator on a Devastavit suggested.

Where upon a Judgment against an Executor or Administrator, an Execution is taken out, and the Sheriff hath returned *Devastavit*, the Defendant on an Action of Debt brought on the Judgment shall put in special Bail, because of the Sheriffs Return, but not upon a bare Suggestion of *Devastavit*, for there common Bail shall serve. *Carth. 264.*

Affidavit to be made of the Cause of Action, if 10l. or upwards.

In all Cases where the Cause of Action amounts to ten Pounds or upwards, and the Plaintiff would compel the Defendant to give special Bail, Affidavit is to be made and filed of the Cause of Action, and the Sum or Sums specified in such Affidavit must be indorsed on the Back of the Writ or Process. And the Sum or Sums so indorsed, the Sheriff, or other Officer, to whom such Writ or Process is directed, shall take Bail for, and for no more. *12 Geo. 2. c. 29. continued for seven Years by 5 Geo. 2. c. 27. and until 1 June 1747. by Statute 13 Geo. 2.*

The Form of an Affidavit to hold to Bail

King's Bench.

*Samuel Anderson
against
Jeremiah Waring.*

Affidavit to hold to Bail.

*Samuel Anderson, of, &c. the Plaintiff
in this Cause, maketh Oath, That the
Defendant*

Defendant, *Jeremiah Waring*, is justly and truly indebted to this Deponent in the Sum of fifty Pounds for Goods sold and delivered, by this Deponent, to the said *Jeremiah Waring*.

Samuel Anderson.

Sworn the *Day of*
before

This Affidavit may be made before any *Before whom*
Judge of the Court, or Commissioner, al- *to be made.*
though such Commissioner be concerned as
Attorney for the Plaintiff, *Easter 15 Geo. 2.*
before the Officer who issues the Writ
or Process, or his Deputy, for which only
the Shilling is to be paid: And such Affi-
davit is to be filed with the said Officer, or
his Deputy.

Where the Cause of Action does not a- *No special*
mount to ten Pounds or upwards, no special *Writ where*
Writ or Process, specially therein expressing *Cause of Ac-*
the Cause or Causes of Action, shall be sued *tion under*
10l.

forth or issued, in order to compel any Per-
son to appear thereto; and if any such be
sued forth, the Proceedings and Judgment
thereon shall be void, and the Attorney or
Officer of the Court, suing forth or issuing
the same, shall forfeit ten Pounds to the
Person or Persons aggrieved thereby. *Stat.*

Geo. 2. c. 27.

Every Officer or Clerk of the Court, who *The Day and*
shall sign any Writ or Process before Judge- *Year of sign-*
ment for the arresting any Person is, at the *ing Process, to*
signing thereof, to set down on such Writ *be set down on*
such Process.

or

or Process, the Day and Year of his signing the same, which shall be entered in the Remembrance, or Book, where the Abstract of such Writ or Process shall be entered, upon Pain of forfeiting ten Pounds for every such Neglect, to be recovered by any Person who will sue for the same. *Stat. 5 & 6 W. & M. c. 21. and 9 & 10 W. 3.*

*The Name of
Attorney to be
written on
every Writ,
&c.*

Every Writ or Process for arresting the Body, and every Writ of Execution, and every Warrant which shall be made out upon any such Writ, Process, or Execution, shall, before the Service or Executing thereof, be subscribed or indorsed with the Name of the Attorney who sues forth the same; and where such Attorney is not the Person immediately retained or employed by the Plaintiff, then also with the Name of the Attorney so immediately retained or employed; and every Copy of any Writ or Process that shall be served upon any Defendant, shall, before the Service thereof, in like manner be subscribed or indorsed with the Name of the Attorney, who shall be immediately retained or employed by the Plaintiff. *Stat. 2 Geo. 2. c. 23. for regulating Attornies, &c.*

The not indorsing the Name of the Attorney on the Warrant made upon any Writ, Process, or Execution, shall not vitiate the same; but such Writ, &c. shall be valid, provided the Writ be regularly subscribed or indorsed; and the Sheriff or other Officer, who shall make out any Warrant, and not subscribe or indorse the At-
torneys

Attorney's Name, shall forfeit 5*l.* to be assessed as a Fine by the Court; one Moiety to the King, the other to the Party grieved. *Stat.*

12 *Geo.* 2.

If any Defendant shall be legally delivered from any Arrest upon Mesne Process, he shall not be again arrested at the same Time by virtue of any other Process at the Suit of the same Plaintiff, upon Pain that every Attorney acting to the contrary, shall be put out of the Roll, and the Plaintiff and Attorney shall be further punished as the Court shall think fit. *Mich.* 15 *Car.* 2.

Where the Cause of Action does not amount to ten Pounds or upwards, the Defendant shall not be arrested, but be served personally with the Copy of the Process. *Stat.* 12 *Geo.* 1. c. 29.

Upon every Copy of such Process so served on any Defendant, there shall be written an English Notice to the Defendant of the Intent and Meaning of such Service to the Effect following, *viz.*

A. B. You are served with this Process to the Intent, That you may by your Attorney appear in his Majesty's Court of King's Bench at the Return thereof, being the Day of (as the Case shall happen to be) in order to your Defence in this Action.

No Fee is to be taken for this Notice.

No Attorney, Bailiff, or other Person, shall take or demand more than five Shillings, for making and serving such Copy.

*Of serving
Process in a
County Pa-
latine.*

lings, for making and serving a Copy of such Process. 5 Geo. 2. c. 27.

It was the Opinion of this Court, that the Service of a Copy of a *Latitat* issuing out of this Court into a County Palatine was good, and that the Party need not have a Mandate from the Chamberlain of the County Palatine upon the *Latitat*; this Proceeding is grounded on the Statute 12 Geo. 1. c. 29. & 5 Geo. 2. c. 27. The latter Act explains the former, and the Words in the last mentioned Statute, *viz.* Provided nevertheless, that all Process shall be executed by the proper Officer of each Franchise, cannot be construed to extend to Countys Palatine, but to such Franchises, or particular Districts in each County, into which the Sheriff cannot enter, but by Writ of *Non Omittas*. The Act says, that Service of such Process, if the Defendant does not appear, is to be confirmed by an Affidavit made before a Judge, or Commissioner of the Court from whence the Process issued; which if the Chamberlain's Mandate was to issue on the *Latitat*, and a Copy of that served on the Defendant, must be sworn before the Chamberlain, or a Baron of the Exchequer there, and consequently could not be read in this Court. *Griffen and Alcock, Hil. 7 Geo. 2.*

The Form of a Common Bail-Piece.

Michaelmas Term in the Twelfth Year of King
George the Second.

Common Bail

Middlesex (to wit) A. B. is delivered on Bail, upon
a Cepi Corpus.

To John Doe, of London, Gent.

and

Richard Roe, of the same Place, Gent.

Robert Richardson, }
Attorney for Defendant. }

At the Suit of C. D.

This is to be written on a Piece of Parchment of the above Form, stamped with a double Sixpeny Stamp; you pay the Clerk of the Common Bails for filing this, 1 s, 2 d. if filed within the Term, or six Days after; otherwise you pay him Four Pence more as a *Post Terminum*.

Where the Cause of Action does not amount to ten Pounds or upwards, and the Defendant is served with a Copy of the Process, and doth not appear at the Return, or within eight Days after the Return thereof, the Plaintiff upon making and filing an Affidavit of the personal Service of the Process, may file Common Bail for the Defendant, and proceed as if Common Bail

If Defendant does not file Common Bail, Plaintiff may on Affidavit of Service.

had been filed by the Defendant. This Affidavit may be made before any Judge or Commissioner of this Court, authorised to take Affidavits, or before the Clerk of the Common Bails, *Stat. 5 Geo. 2. c. 27.* and is to be filed with the Clerk of the Rules *gratis*.

*Eight Days to
file common
Bail reckoned
exclusive.*

The eight Days allowed for the Defendant to file Common Bail in, are to be reckoned exclusive of the Day of the Return of the Writ, as if the Writ be returnable on *Wednesday* next after three Weeks from the Day of *St. Michael*, the Defendant has the *Thursday* Sevenight following, and the Plaintiff can't file Bail for him till the *Friday*.

The Form of the Affidavit.

King's Bench.

C. D. against A. B.

*Affidavit of
Service of Pro-
cess.*

E. F. Of, &c. Gentleman, maketh Oath,
That he, this Deponent, did on
the Day of at
in the County of personally
serve the Defendant A. B. with the
Writ or Process hereunto annexed, by
shewing him the said annexed Writ
or Process, and at the same time de-
livering to him a true Copy thereof,
on which Copy was such *English* No-
tice in Writing, of the Intent and
Meaning of such Service, as, by the
Statute in that Case made, is required.

Sworn, &c.

E. F.
In

in the Court of King's Bench.

85

In all Cases where Common Bail shall be filed by the Plaintiff for the Defendant, by Virtue of the late *Act for preventing frivolous and vexatious Arrests*: These Words shall be written on the Bail-Piece, viz. [filed according to the Statute] or, Words to the like Effect. *Mich. 10 Geo. 2.*

Every Attorney, who shall appear for any Defendant in any Action in which Bail is not required, shall duly file Common Bail for such Defendant, of the Term of which he appears, and give Notice thereof to the Plaintiff, or to his Attorney.

No Attorney shall be compelled to appear or file Common Bail for any Defendant in this Court, unless such Attorney hath by a Note in Writing undertaken to do, and such Note be produced by the Plaintiff's Attorney; but, if any Attorney hath accepted a Warrant to appear for the Defendant, (which Warrant shall in no wise be revoked) or hath subscribed the same, and does not file Common Bail accordingly, such Attorney shall be compelled to file Common Bail of the proper Term, and receive a Declaration, and plead thereto; and in Default of pleading Judgment may be entered by Default (a Rule to plead having been first entered); for the Neglect of the Defendant, or his Attorney, shall not tend to the Plaintiff's Prejudice.

If a Writ be sued out against the Husband and Wife, and the Wife only be arrested and detained in Custody, she shall not be compelled to put in Bail for herself only.

Husband, but shall file Common Bail for herself, and have her *Supersedeas* to discharge her.

Common Bail to be filed on Judgment by Confession.

Where Judgment is confessed by Warrant of Attorney, Common Bail ought to be filed for the Defendant, on Pain of forfeiting 10 s. to the Box. *Hil. 1 W. & M.*

Voluntary Appearance invalid, unless Process sued out in 14 Days.

If the Defendant shall voluntarily appear at the Suit of any Plaintiff in any Action here in Court, such Appearance shall be of no Effect, unless some Process be sued out within fourteen Days next after such Appearance. *Trin. 4 W. & M.*

Bail-Bond assignable.

If the Action be for Special Bail, and the Defendant be arrested, he usually gives a Bail-Bond to the Sheriff; which if forfeited, the Sheriff may assign to the Plaintiff, for which you pay 5 s. viz. for the Assignment 2 s. 4 d. for the Plaintiff's Discharge for the same 2 s. 4 d. for the Return of the Writ 4 d. This in *Middlesex*; in other Counties they differ, but not much.

Sheriff must take Bail.

An Action lies against the Sheriff, if reasonable Bail be tendered and refused. *1 Mod. 4.*

Action against Bail.

You may bring an Action against the Obligors in the Bail-Bond in your own Name, but cannot have Special Bail, for that would be Bail *ad infinitum*. Take Care before you take the Assignment, that the Bail in the Bail-Bond be sufficient, for the Sheriff is not answerable afterwards, as I apprehend.

When Bail-Bond may be put in Suit.

No Bail-Bond shall be put in Suit till four Days exclusive after the Return of the Writ.

Writ, if the Arrest be in *London* or *Mid-
Hesex*; and till six Days after the Return
of the Writ, if the Arrest be in any other
County. *Mich. 8 Annæ.*

No Action shall be brought upon As-
signment of a Bail-Bond till the Assign-
ment be first stamped.

*No Action be-
fore Assign-
ment be stamp-
ed.*

Every Bail-Bond ought to be in a Penalty
double the Sum sworn to, and indorsed on
the Process, on which the Defendant was
arrested.

*Bail-Bond to
be in double
the Sum sworn
to.*

If the Bail-Bond be put in Suit, the
Court on Application will stay the Proceed-
ings, upon putting in good Bail, paying
the Costs, receiving a Declaration in the
original Action, pleading to Issue, and
taking short Notice of Trial, so that the
Issue may be tried the same Term; but if
the Plaintiff has lost a Trial, the Court will
require further, that the Bail should con-
sent to have a Judgment entered against
them upon the Bail-Bond for the Plaintiff's
Security. And if the Plaintiff might have
had Judgment against the Defendant in the
original Action, in case Bail had been put
in in Time, the Court in such Case will
not stay the Proceedings on the Bail-Bond.
Vid. Carth. 278.

*Terms on
which the
Court will stay
Proceedings.*

After Bail-Bond forfeited, the Defendant
cannot plead in Abatement to the original
Action. *Salk. 519.*

*No Plea in
Abatement af-
ter Bail-Bond
forfeited.*

Special Bail.

Special Bail is written in Parchment in the following Form on a double Twelf. penny Stamp.

*Michaelmas Term in the Twelfth Year of King
George the Second.*

*London (to wit) A. B. is Delivered on Bail, upon a
Cepi Corpus.*

*To C. D. of Cheapside, London, Mercer,
and
E. F. of Fleet-streer, London, Gent.*

*{ Naming the Bail, with
their Places of Abode
and Additions. }*

*J. K. }
Attorney. }*

At the Suit of G. H.

The Condition of the Recognizance. At the taking the Recognizance the Condition is expressed to the Bail as follows :

You do jointly and severally Undertake, that if the Defendant *A. B.* shall be condemned in this Action at the Suit of the Plaintiff *G. H.* he shall satisfy the Costs and Condemnation, or render himself into the Custody of the Marshal of the *Marshalsea* of the Court, or you will pay the Costs and Condemnation for him.

Put.

Putting in Bail in Term.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Master of the Office	0	2	6
Judges Clerk	0	1	0
Porter	0	0	6
	<hr/>		
	0	4	0
	<hr/>		

In Vacation.

Master of the Office	0	2	6
Judges Clerk	0	2	0
Porter	0	0	6
	<hr/>		
	0	5	0
	<hr/>		

See for Bail on *Habeas Corpus*, Proceedings by Original, and Writ of Error, under those Heads.

If the Defendant be arrested in *London* Four Days to or *Middlesex* by Process out of this Court, put in Bail in and gives a Bail-Bond for his Appearance London and at the Return of the Process, he has four Middlesex, Days after the Return to put in Special and six Days in Bail; and if arrested in any other County, any other County, he has six Days, and in the mean Time no Proceedings ought to be upon the Bail-Bond. *Mich. 8 Annæ.*

The Rule does not express whether the Days in this four Days and six Days are to be inclusive Court reckoned or exclusive of the Day of the Return of exclusive. the Process; and in like manner it is not ascer-

ascertained in any of the Rules of the Court, which require a Matter to be done or not to be done within so many Days, how the Days are to be reckoned, whether inclusively or exclusively; but the Practice in almost all Cases, is to reckon Days exclusive; as in the *Common Pleas* they are reckoned inclusive, and so the eight Days, which the Defendant has by the late Act to appear after the Return of the Process are in this Court counted exclusive, in that Court inclusive of the Day of the Return of the Process; which Difference in Reckoning is in the short Terms, a Means of gaining the Term, and gives the Suitor in the one Court an Advantage which the Suitor in the other has not.

In the Common Pleas inclusive.

Sunday, if the last Day, not to be counted.

If the fourth or sixth Day happens to fall on a *Sunday*, the Defendant has *Monday* the fifth or seventh Day to put in his Bail.

Notice of Bail in Writing.

Where Special Bail is put in *de bene esse*, before any Judge or Commissioner, the Defendant is forthwith to give Notice thereof in Writing to the Plaintiff or his Attorney, and of the Names of such Bail, with their Places of Abode and Conditions; and if no Exception be taken to such Bail, and entered in the Judge's Book within twenty Days next after such Notice, then upon Oath thereof, (for which no Fee is to be taken,) such Bail shall within four Days next after be filed by the Attorney for the Defendant. *Micb. 16 Car. 2. Micb. 8 Annæ.*

Exception to be in 20 Days.

An Exception entered after the Expiration of the said 20 Days, shall be of no Validity. *After of no Validity. Mich. 8 Anne.*

If the Plaintiff accepts the Bail, he may take away the Bail-piece from the Judge's Chamber, and file it for his own Expedition; but after 20 Days it becomes absolute, and the Defendant takes it away and files it. *Comb. 263.*

If the Defendant surrenders in Discharge of his Bail, the Bail-piece should be marked and discharged, otherwise the Plaintiff may proceed against the Bail. *Ib.*

Every Bail taken by Commissioners within 40 Miles of London or Westminster, shall be transmitted to the Chief Justice, or one of the Judges of the Court, within eight Days after the Taking thereof; if above forty Miles, within fifteen Days, unless all the Judges be on the Circuits; and then as soon as any one of them is returned to his Chambers. *Mich. 8 W. 3.* And there must be an Affidavit of the due Taking the Bail, in the following or like Form.

In the King's Bench. C. D. against A. B.

E. F. of in the County of Gent. maketh Oath, That the Recognizance of Bail hereunto annexed, was duly acknowledged by the said *G. H.* and *J. K.* in this Deponent's Presence, before *L. M.* Esq; the Commissioner who took the same.

Sworn, &c.

E. F.

IF

Process in one County, Declaration in another, Bail not discharged if by Bill; aliter, if by Original. If the Defendant be arrested by Process directed to the Sheriff of one County, and Bail is put in thereon, and afterwards the Plaintiff lays his Action in another County, yet the Bail, if the Action be by Bill, are not discharged; otherwise if by Original.

Bail before Continuance-Day to be filed of preceding Term, after Continuance-Day of the subsequent Term. Every Bail taken before or upon the Continuance-Day, is a Bail, and to be filed of the preceding Term; and every Bail taken after the Continuance-Day, is a Bail, and to be filed of the subsequent Term, and not otherwise; but where new Bail is added to other Bail, taken on or before the Continuance-Day, in such Case new Bail shall be taken and filed as of that Term in which the Bail was first put in.

Bail to be justified in Court. Bail cannot be justified before a Judge at his Chambers, except by Consent, but must be justified in Court upon Notice given thereof, and Affidavit made of such Notice.

In the Country by Affidavit. Bail taken before a Commissioner in the Country, may be justified without their personal Appearance in Court, by Affidavit of their Ability, and of their being Housekeepers.

Bail accepted to be filed in 20 Days. Every Bail put in before a Judge of the Court, which is accepted by the Plaintiff, ought to be filed within twenty Days after it is so accepted, by the Attorney who put it in. *Trin. 13 Car. 2.*

Husband to find Bail for his Wife. If an Action, wherein Special Bail is required, be brought against Husband and Wife, and the Husband only is arrested, he

he shall put in Special Bail as well for his Wife as for himself.

If Husband and Wife be arrested, and the Husband puts in Bail for himself, he must put in Bail for his Wife also; but if he lies in Prison, the Wife cannot be let out upon common Bail: But it is otherwise if the Husband absconds and cannot be arrested. *1 Ventr. 49. 1 Salk. 115.* There the Wife must put in common Bail. *V. 1 Lev. 216.*

If the Defendant is arrested by a wrong Name, and puts in Bail, he need not join in the Recognizance, and then he is not estopped to plead it. *Salk. 3, 8.*

Bail cannot be excepted against after the Plaintiff has declared, unless the Declaration was delivered *De bene esse*; for by declaring he has admitted the Bail to be sufficient.

Where an Exception is entered against Bail in Term-Time, and Notice in Writing is given of it to the Defendant's Attorney, the Defendant shall procure his said Bail to justify, or shall add others who shall justify within four Days *exclusive*, next after such Notice; but if such Exception be entered in the Vacation, and the like Notice be given of it, the Bail first put in, or other additional Bail, shall justify on the first Day of the following Term. *Easter Term 5 Geo. 2.*

Exception to Bail by Original to be entered in the Filacer's Book, as Exception to Bail by Bill is to be entered in the Judge's

When Feme Covert not to be discharged on common Bail.

Of Bail when Defendant arrested by a wrong Name.

No Exception to Bail after Declaration delivered,

Bail in Term to be perfected in 4 Days after Exception.

In Vacation on first Day of subsequent Term.

Exception to Bail by Original to be entered in Filacer's Book.

Judge's Book, and like Notice to be given of it to the Defendant's Attorney.

Rule for Sheriff to return the Writ.

To bring in the Body.

And in Default an Attachment.

Explanation of the Rule.

If the Plaintiff is dissatisfied with the Bail taken by the Sheriff upon the Arrest, and the same Persons become Bail above, the Plaintiff is not bound to accept them, but may enter an Exception, and serve the Sheriff with a Rule to return the Writ within 6 Days next after Notice; and upon the Sheriff's returning the Writ, the Plaintiff may serve him with the like Rule to bring in the Body of the Defendant; and if the Sheriff neglect to return the Writ, or bring in the Body within the Time prescribed by the Rule, the Court will grant an Attachment against him. — *Mich. 6 Geo. 2.*

It is presumed it is not intended by the Rule for bringing in the Body of the Defendant, that the Sheriff shall in all Cases actually bring the Defendant into Court; for where the Plaintiff has taken a Bail-Bond, and the Defendant is at large, and the Return of the Writ is past before the Sheriff is served with the Rule, the Sheriff has no Power to retake the Defendant, and cannot comply with the Letter of the Rule; but the Design of it is, that good Bail be put in; and if that be done, the Sheriff will be in no Danger of an Attachment.

If Plaintiff takes an Assignment of the Bail Bond,

and the same Persons become Bail above, he cannot except against them.

If the Plaintiff takes an Assignment of the Bail-Bond, and the same Persons who are

the Bail to the Sheriff thereupon become Bail to the Action, the Plaintiff is not at Liberty to except against them.

No Person being Bail in a Court, or *Bail not liable before a Judge, shall upon a Recovery to greater Sum against the Defendant be answerable for than sworn to, any greater Sum or Sums than are sworn and indorsed on Writ.* or indorsed on the Writ or Process, on which the Defendant was arrested, (altho' the Part of the Condition of the Recognizance is to pay the whole Condemnation Money, if the Defendant does not); and if a greater Sum be recovered, he shall not be discharged, but shall be liable for such Sum or Sums as shall be so sworn to, or indorsed, or any lesser Sum that shall be recovered against the Defendant in such Action, wherein he became Bail, together with Costs of Suit. *Easter 5 Geo. 2.*

No Attorney of this or any other Court shall be Bail in any Action or Suit depending in this Court. *Mich. 14 Geo. 2. Mich. 1654.*

No Bailiff, Sheriff's Officer, or other *No Bailiff to be Bail.* Persons concerned in the Execution of Process, shall be permitted to be Bail in any Action or Suit depending in this Court. *Mich. 14 Geo. 2.*

In an Action of Covenant the Defendant is not bound to put in Special Bail, *No Bail in Covenant required, unless, &c.* unless the Plaintiff has obtained a Rule of Court, or an Order from a Judge for that Purpose, or unless the Covenant is for Payment of Money *Vide Mich. 1654.*

In

No Bail in
Account, till
Judgment
quod compu-
tet.

In Account the Plaintiff insisted upon Special Bail, because the Defendant would go beyond Sea ; but was denied by the Court : For in Account no Special Bail is to be found till Judgment *quod Computet.*
1 Lev. 300.

No Bail in
Battery, &c.
without Or-
der.

In Battery, Conspiracy, false Imprisonment, no Special Bail of Course, without Special Motion and Order. *Mich. 1654.*

An Order may be obtained from a Judge at his Chambers for Special Bail in any of these Cases, on a proper Affidavit of the Fact.

Affidavit of an
Assault in or-
der to procure
a Judge's Or-
der for holding
the Defendant
to Bail.

A. B. of C. in the County of D. Clerk, maketh Oath, That on *Friday*, the — Day of — last past, he this Deponent going to view whether the Tithe Hay on the Land of E. F. of C. aforesaid were ready to be set forth, he the said E. F. did then in the said Field, without any reasonable Cause, in a violent Manner assault, beat and throw this Deponent on the Ground, this Deponent making no Opposition or Resistance against the said E. but this Deponent being rescued by some Persons present from the said E. the said E. did again, as soon as he got loose from the Person who rescued this Deponent, a second Time assault, throw down, beat and kick this Deponent about the Head and Body, so that the Blood gushed out at this Deponent's Ears, which

occasioned to this Deponent the Loss of his Speech and Hearing for some Time, so as to render him incapable of performing his Duty in the aforesaid Parish, he being Minister of the same; and this Deponent further saith, that the said *E.* hath often declared, that it was no Sin for any Man to kill or destroy this Deponent.

Sworn, &c.

A. B.

In Slander no Special Bail, except in Slander of Title, wherein to be left to the Direction of the Judges. *Mich. 1654.* No Bail in Slander, except, &c.

In an Action on the Case for calling a Woman of Quality Whore, whereby she lost her Marriage, it was ruled on Motion, that the Defendant should find Special Bail; though generally in Actions for Words no Special Bail is usual, yet on the Circumstances of the Case the Court may compel the Defendant to find Special Bail. — And in case of Executors, though they do not find Bail in ordinary Cases, yet in special Cases they shall find Bail, as where it appears they have wasted the Goods.

Lev. 39. Vide 1 Mod. 16.

Foster moved, that the Defendant might put in good Bail to the Plaintiff's Action; or although the Action be but for Words, yet the same being spoken against an Earl, the Court may compel Special Bail; and it was granted, *nisi*. The Earl of Stamford against *Gordal*. *Raym. 74.* Bail in Scandalum Mag-natum.

Vol. I.

H

If

No Bail for Debt on Judgment, unless, &c. If an Action be brought upon a Judgment where the Debt or Damages recovered without the Costs amount to ten

Pounds or upwards, the Defendant must give Special Bail; but it is otherwise, where they amount to ten Pounds or upwards by the Addition of Costs.

Bail cannot be Witness.

One that is Bail cannot be a Witness for the Defendant upon the Trial; but the Court upon Motion will discharge such Bail on putting in another good Bail in his stead.

As to Bail on *Habeas Corpus*, *Certiorari*, Writs of Error, &c. see hereafter under those several Heads.

Declarations.

When the Defendant hath filed his Bail, either Special or Common, as the Case required, the next Thing the Plaintiff has to do, is the preparing and delivering his Declaration, which is to contain the Substance and Matter of his Complaint.

Precedents of Declarations.

Michaelmas Term in the twelfth Year of King George the Second.

On a Bond.

Middlesex, **R**OBERT Fairebeard, Esq; to wit. complains of Thomas Swynborne, Esq; * otherwise called Thomas Swynborne of Gray's Inn in the County of Middlesex, Esq; being in the Custody of the Marshal

* As described in the Bond exactly.

Marſhal of the *Marſhalſea* of our Lord the King, before the King himſelf, of a Plea, that he render to the ſaid *Robert* one hundred Pounds lawful Money of *Great Britain*, which the ſaid *Thomas* owes to the ſaid *Robert*, and unjuſtly detains from him; for this, to wit, that whereas the ſaid *Thomas* on the * tenth Day of *May* in the * *The Date of the Bond.* Seventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at the Pariſh of *St. Clement Danes* in the County of *Middleſex*, by his certain Writing obligatory ſealed with the Seal of the ſaid *Thomas*, and to the Court of our ſaid Lord the King now here ſhewn, the Date whereof is on the ſame Day and Year, acknowledged himſelf to be bound to the ſaid *Robert* in the ſaid one hundred Pounds, to be paid to the ſaid *Robert* when he the ſaid *Thomas* ſhould be thereunto required; nevertheless the ſaid *Thomas*, although often required, &c. both not yet paid the ſaid one hundred Pounds to the ſaid *Robert*, but hath hitherto refuſed, and ſtill doth reſuſe to pay him the ſame, to the Damage of the ſaid *Robert* of twenty Pounds; And thereupon he brings Suit, &c.

Robert Richardſon for the Plaintiff.

Anthony Beckwith for the Defendant.

Pledges of Proſecuting { *John Doe,*
Richard Doe.

Michaelmas Term in the tenth Year
of King George the Second.

On a Bill pe- Middlesex, *WILLIAM Dowse* complains
nal. to wit. of *William Cave*, otherwise
called, &c. being in the Custody of the
Marshal of the *Marshalsea* of our Lord the
King before the King himself, of a Plea
that he render to him one hundred Pounds
lawful Money of *Great Britain*, which the
said *William Cave* owes to the said *William*
Dowse, and unjustly detains from him, for
this, to wit, that whereas the said *William*
Cave on the twentieth Day of *January* in
the sixth Year of the Reign of our So-
vereign Lord *George* the Second, now King
of *Great Britain*, &c. at the Parish of *St.*
Clement Danes in the County of *Middle-*
sex, by his Bill obligatory, sealed with the
Seal of the said *William Cave*, and to the
Court of our said Lord the King now here
shewn, the Date whereof is on the same
Day and Year, acknowledged himself to be
indebted to the said *William Dowse* in
fifty Pounds to be paid to the said *William*
Dowse upon the first Day of *May* then
next ensuing after the Date of the said
Bill; and to the said Payment well and
truly to be made, the said *William Cave* by
the said Bill firmly bound himself, his
Heirs, Executors and Administrators; and
the said *William Dowse* in Fact says, that
the said *William Cave* did not on the said
first Day of *May* pay to the said *William*
Dowse

Dowse the said fifty Pounds which upon that Day he ought to have paid him according to the Form and Effect of the said Bill; whereby an Action has accrued to the said *William Dowse*, to demand and have of the said *William Cave* the said fifty Pounds; yet the said *William Cave*, although often required, &c. has not yet paid the said fifty Pounds to the said *William Dowse*, but has hitherto intirely refused, and still does refuse to pay him the same, to the Damage of the said *William Dowse* of twenty Pounds; And thereupon he brings Suit, &c.

A. B. for the Plaintiff.

C. D. for the Defendant.

Pledges of Prosecuting { *John Doe,*
Richard Roe.

Easter Term in the thirteenth Year of King George the First.

Essex, *JOHN P.* complains of *George* On a single to wit. *G.* being in the Custody of the Bill. Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a Plea that he render to him fifty Pounds lawful Money of *Great Britain*, which the said *George* owes to the said *John* and unjustly detains from him; for this, to wit, That whereas the said *George*, on the tenth Day of *May* in the tenth Year of the Reign of our Sovereign Lord *George* the Second now King of *Great Britain*, &c.

H 3

at

at *Chelmsford* in the County of *Essex*, by his Bill obligatory, sealed with the Seal of the said *George*, and to the Court of our said Lord the King now here shewn, the Date whereof is on the same Day and Year, acknowledged himself to be indebted to the said *John* in the said fifty Pounds, to be paid to the said *John*, his Executors, Administrators or Assigns, upon the first Day of *August* next ensuing the Date of the said Bill obligatory; and to the said Payment well and truly to be made the said *George* by the said Bill firmly bound himself, his Heirs, Executors, and Administrators; yet the said *George*, although often requested, &c. has not yet paid the said fifty Pounds to the said *John*, but has hitherto intirely refused, and still refuses to pay him the same, to the Damage of the said *John* of twenty Pounds; And thereupon he brings Suit, &c.

A. B. for the Plaintiff.

C. D. for the Defendant.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

*Michaelmas Term in the tenth Year
of King George the Second.*

On a Mutua- *London,*
tus. *to wit.*

A. *B.* complains of *C. D.* being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a Plea, that he render to him five hundred Pounds, lawful Money

Money of Great Britain, which the said C. D. owes to the said A. B. and unjustly detains from him; for that, *to wit*, That whereas the said C. D. on the twenty-first Day of April in the tenth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. at London aforesaid, *to wit*, in the Parish of Saint Mary Le Bow in the Ward of Cheap, borrowed of the said A. B. the aforesaid five hundred Pounds to be paid to the said A. B. when he should be thereunto required; nevertheless the said C. D. although often required, &c. hath not paid the said five hundred Pounds to the said A. B. but hath hitherto refused, and still doth refuse to pay him the same, to the Damage of the said A. B. of twenty Pounds; And thereupon he brings Suit, &c.

A. B. for the Plaintiff.

C. D. for the Defendant.

Pledges of Prosecuting { John Doe,
Richard Roe.

Michaelmas Term in the Fourteenth Year of George the Second.

Middlesex, JOHN Morton complains of *On an inland Bill of Exchange by the Indorsee of an Indorsee against the Drawer.*
to wit, John Sleddal, being in the Custody of the Marshal of the Marshalsea of our Lord the King, before the King himself, for this, *to wit*, That whereas the said John Sleddal, on the thirteenth Day of April in the Year of our Lord one thou-

Bill of Ex-
change.

1 Indorsement.

2 Indorsement.

and seven hundred and forty, at *Westminster* in the County of *Middlesex*, (then being a Person using Commerce, *to wit*, at *Westminster* aforesaid) according to the Usage and Custom of Merchants made his Bill of Exchange in Writing subscribed with his Hand, bearing Date the same Day and Year, and directed the said Bill of Exchange to one *Kingsmil Eyre*; by the which said Bill of Exchange the said *John Sleddal* required the said *Kingsmil Eyre* to pay to one *Thomas Pipon*, or his Order, the Sum of twenty Pounds twenty Days after Sight of the said Bill, for Value received, and to place the same to the Account of Subsistence, for the Use of Captain *Spicer's* Company of Invalids in Garrison at *Jersey*, and the same should be allowed in Account by the said *John Sleddal*; and the said *Thomas Pipon* afterwards, *to wit*, on the fourteenth Day of *May* in the Year of our Lord aforesaid, at *Westminster* aforesaid, by his Indorsement made upon the said Bill, according to the Usage and Custom of Merchants, ordered the Contents of the said Bill, *to wit*, the said twenty Pounds, to be paid to one *John Vowler*, or his Order: Which said *John Vowler* afterwards, *to wit*, on the twenty-seventh Day of *May* in the Year aforesaid, at *Westminster* aforesaid, by his Indorsement made upon the said Bill of Exchange, according to the Usage and Custom of Merchants, ordered the Contents of the said Bill, *to wit*, the said twenty Pounds, to be paid to the said *John Morton*, or his Order;

Order; and the said *John Morton* in Fact says, that he afterwards, *to wit*, on the first Day of *June* in the Year aforesaid, at *Westminster* aforesaid, shewed the said Bill, with the said Indorsements thereupon made, to the said *Kingsmil Eyre*, and then and there requested him to accept the said Bill; which said *Kingsmil Eyre* would not accept the said Bill, but then and there intirely refused to accept the said Bill, or ever to pay the said twenty Pounds mentioned in the said Bill; of which Premisses the said *John Sleddal* afterwards, *to wit*, on the eighth Day of *June* in the Year aforesaid, at *Westminster* aforesaid, had Notice; by reason of which said Premisses, he the said *John Sleddal*, according to the Usage and Custom of Merchants, became liable to pay to the said *John Morton* the said twenty Pounds in the said Bill mentioned; and the said *John Sleddal* being so liable, afterwards, *to wit*, on the same Day and Year, at *Westminster* aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said *John Morton*, that he the said *John Sleddal* would well and truly pay the said twenty Pounds to the said *John Morton*; And also, whereas the said *John Sleddal*, on the 30th Day of *August* in the Year aforesaid, at *Westminster* aforesaid, was indebted to the said *John Morton* in eighty Pounds, for Money before that Time received by the said *John Sleddal* to the Use of the said *John Morton*, and being so indebted, the said *John Sleddal*, on the same Day

Drawee refuses to accept.

Assumpsit.

Indeb. Ass. for Money received to the Plaintiff's Use.

Breach.

Day and Year, at *Westminster* aforesaid, in consideration thereof, undertook, and then and there faithfully promised the said *John Morton*, that he the said *John Sleddal* would well and truly pay the said eighty Pounds to the said *John Morton*; yet the said *John Sleddal* not regarding his said several Promises and Undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *John Morton* in this Behalf, has not paid the said several Sums of Money, or any Part thereof, to the said *John Morton*, (although the said *John Sleddal* afterwards, to wit, on the thirtyeth Day of *August* in the Year aforesaid, and often afterwards, at *Westminster* aforesaid, was thereunto requested by the said *John Morton*) but he has intirely refused, and still refuses to pay him the same, to the Damage of the said *John Morton* of eighty Pounds; And thereupon he brings Suit, &c.

John Lounds, for the Plaintiff.

Richard Goswell, for the Defendant.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

Trinity Term in the Fourteenth and Fifteenth Years of King George the Second.

London, **THOMAS W.** complains of *On a Promissory Note,*
wit. **Hugh H.** being in the Cu.
 body of the Marshal of the *Marshalsea*
 of our Lord the King, before the King him-
 self; for that, whereas the said *Hugh H.*
 on the twelfth Day of *June* in the
 twelfth Year of the Reign of our Sovereign
 Lord George the Second, now King of
 Great Britain, &c. at London aforesaid,
wit. in the Parish of Saint *Mary Le Bow*
 in the Ward of *Cheap*, made a certain Note
 in Writing, subscribed with his own Hand,
 commonly called a Promissory Note, bear-
 ing Date the same Day and Year, by
 which Note the said *Hugh H.* promised
 to pay to the said *Thomas W.* or his
 Order, one Month after the Date of the
 said Note, the Sum of ten Pounds for Va-
 lue received, by him the said *Hugh H.*
 by Reason whereof, and also by Force
 of the Statute in that Case made and
 provided, the said *Hugh H.* became lia-
 ble to pay to the said *Thomas W.* the

* Declaration in case on a Promissory Note for twenty Guineas, not alledging the Value of them. Demurrer. *Per Cur.* The Action is brought for Damages, and the Value of the Guineas may be given in Evidence: In Debt for so many Guineas, the Value must be set forth, so as to ascertain the Debt; Judgment for the Plaintiff. *Carth.* 255, 322.

said

faid Sum of ten Pounds in the faid Note mentioned, according to the Tenor and Effect of the faid Note; and being so liable, the faid *Hugh H.* in Consideration thereof, afterwards, *to wit*, the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, undertook and then and there faithfully promised the faid *Thomas W.* that he the faid *Hugh H.* would well and truly pay to the faid *Thomas W.* the faid ten Pounds in the faid Note mentioned, according to the Tenor and Effect of the faid Note: And

*On an indorsed
Note by the
Indorsee
against the
Indorser.*

Indorsement.

whereas one *Thomas Dawson*, on the Sixth Day of *July* in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at *London* aforesaid, in the Parish and Ward aforesaid, made his certain Note in Writing, called a Promissory Note, subscribed with his proper Hand, bearing Date the same Day and Year last aforesaid, and by the same Note promised to pay to the faid *Hugh H.* or Order, two Months after Date of the same Note, thirty Pounds for Value received: And whereas, also the faid *Hugh H.* afterwards, *to wit*, the same Day and Year last aforesaid, at *London* aforesaid, in the Parish and Ward aforesaid, (the faid thirty Pounds in the faid last mentioned Note contained, or any Part thereof, being no ways paid) by his certain Indorsement, with his proper Hand subscribed on the same Note, ordered the faid *Thomas Dawson* to pay to the faid *Thomas W.*

W. the said thirty Pounds in the said last mentioned Note contained, of which said Indorsement he the said *Thomas W.* afterwards, *to wit*, on the ninth Day of September in the Year aforesaid, at London aforesaid, in the Parish and Ward aforesaid, gave Notice to the said *Thomas Dawson*, and then and there requested him to pay to the said *Thomas W.* the said thirty Pounds in the said last mentioned Note contained, according to the Tenor of the same Note; which the said *Thomas Dawson* then and there refused to do; whereof the said *Hugh H.* afterwards, *to wit*, the same Day and Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, had Notice, by Reason of which Premisses, and by Force of the Statute in that Case lately made and provided, the said *Hugh H.* became liable to pay to the said *Thomas W.* the said thirty Pounds in the said last mentioned Note contained; and being so liable, the said *Hugh H.* in Consideration thereof, afterwards, *to wit*, the same Day and Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook and then and there faithfully promised to the said *Thomas W.* that he the said *Hugh H.* would, when he should be thereunto afterwards required, well and faithfully pay the said thirty Pounds to the said *Thomas W.* And also whereas the Ind. Ass for said *Hugh H.* afterwards, *to wit*, on the Money lent. ninth Day of September in the twelfth Year

Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. at London aforesaid, *to wit*, in the Parish of St. Mary le Bow, in the Ward of Cheap, was indebted to the said Thomas W. in the Sum of forty Pounds of lawful Money of Great Britain for the like Sum of Money by the said Thomas W. at the special Instance and Request of the said Hugh H. before that Time to the said Hugh H. lent and advanced; and being so indebted, the said Hugh H. in Consideration * thereof afterwards, *to wit*, on the same Day and Year last aforesaid, at London aforesaid, in the Parish and Ward aforesaid, undertook and then and there faithfully promised the said Thomas W. to pay him the said forty Pounds, when he should be thereunto required: Nevertheless the said Hugh H. no ways regarding his said several Promises and Undertakings made in Form aforesaid, but contriving, and fraudulently intending craftily and subtilly to deceive and defraud the said Thomas W. in this Behalf, hath not paid him the said several Sums of Money, or any Part thereof, nor any ways contented him for the same (although often required, &c.) but hath altogether refused, and still doth refuse to pay him the same, to the Damage of the said Thomas W.

* Where the Law creates a Promise, the Omision of *inde* hurts not; *aliter* in a Collateral Matter. *Barret v. Morley*, Pas. 22 Car. 2.

in the Court of King's Bench.

III

of fifty Pounds; And thereupon he brings
suit, &c.

William Gibbs for Plaintiff.

Nicholas Phipps for Defendant.

Pledges of Prosecuting { *John Doe,*
 { *Richard Roe.*

*Trinity Term in the Eleventh and
Twelfth Years of King George the
Second.*

London, *GRIFFITH Roberts* complains
to wit, of *William Betts* being in the
Custody of the Marshal of the *Marshalsea*
of our Lord the King, before the King
himself, for that whereas the said *William*
Betts, on the eighth Day of *January* in Indeb. Ass.
the Eleventh Year of the Reign of our So- for Goods sold
vereign Lord *George the Second*, now King and delivered,
of *Great Britain*, &c. at *London* aforesaid,
to wit, in the Parish of *St. Mary le Bow* in
the Ward of *Cheap*, was indebted to the
said *Griffith Roberts* in fifty Pounds of law-
ful Money of *Great Britain*, for divers
Goods, Wares, and Merchandizes, by the
said *Griffith Roberts* before that Time sold
and delivered to the said *William Betts*, at
his special Instance and Request; and be-
ing so indebted, he the said *William Betts* in
Consideration thereof, afterwards, to wit, the
same Day and Year at *London* aforesaid, in
the Parish and Ward aforesaid, undertook,
and then and faithfully promised the said
Griffith Roberts, that he the said *William*
Betts

Quantum
Val. thereon.

Betts would well and truly pay the said fifty Pounds to the said *Griffith Roberts*, when he the said *William Betts* should be thereunto required. *And whereas* * afterwards, to wit, the same Day and Year at *London* aforesaid, in the Parish and Ward aforesaid, in Consideration that the said *Griffith Roberts* had before that Time sold and delivered to the said *William Betts*, at his like special Instance and Request, divers other Goods, Wares, and Merchandizes, he the said *William Betts* undertook, and then and there faithfully promised the said *Griffith Roberts*, that he the said *William Betts* would, when he should be thereunto required, well and truly pay to the said *Griffith Roberts* so much Money as the said last mentioned Goods, Wares, and Merchandizes, were, at the Time of the Sale and Delivery thereof, reasonably worth; and the said *Griffith Roberts* in Fact says, that the said last mentioned Goods, Wares, and Merchandizes, were, at the Time of the Sale and Delivery thereof by the said *Griffith Roberts* to the said *William Betts*, reasonably worth other fifty Pounds of like

* In Consideration that *Q.* had sold a Mare to *D.* he promised to pay *Q. tantum &c. quantum Equus habere meruit*; Averment *quod Equus habere meruit* is Absurd. Judgment reversed on Error. *Carth.* 254.

† *Indeb. Ass. & Quant. Meruit* no nominative Case to the *Assumpsit* & *promisit* in the *Quant. Meruit* Error brought. *Cur.* Since 'tis positively affirmed at first, that the Defendant *sup. se Assumpsit*, that nominative Case, viz. *defendens* shall go to the subsequent Verbs. *Carth.* 379.

lawful Money of Great Britain, to wit, at London aforesaid, in the Parish and Ward aforesaid, whereof the said C. D. then and there had Notice: *Nevertheless* the said *Breach.* William Betts no ways regarding his said several Promises and Undertakings made in Form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said Griffith Roberts, in this Behalf, hath not paid him the said several Sums of Money, or any Part thereof, nor any ways contented him for the same (although often required, &c.) but hath hitherto refused, and still doth refuse, to pay him the same, to the Damage of the said Griffith Roberts of fifty Pounds: And thereupon he brings Suit, &c.

Thomas Wilson for the Plaintiff.

Henry Wallis for the Defendant.

Pledges of Prosecuting { *John Doe,*
 Richard Roe.

Michaelmas Term in the Tenth Year
of King George the Second.

* Middlesex, *SAMUEL Anderson* com- Indebitatus Assumpsit for
to wit, plains of *Thomas Trout* being Work done,
in the Custody of the Marshal of the Mar- and Materials
found.

* *Indeb. Ass. pro opere & labore* sufficient without setting forth what Sort or Manner of Work or Labor. *Cur.* The only Reason why the Plaintiff is bound to shew wherein the Defendant is indebted is, that it may appear to the Court, that 'tis not a Debt on Record or Specialty, but only upon Simple Contract, and any general Words, by which that may be made to appear, are sufficient. *Carth. 276. 1 Mod. 8.*

Shalſea of our Lord the King, before the King himſelf, for that whereas the ſaid *Thomas Trout*, on the ninth Day of *September* in the twelfth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at *Westminster* in the County of *Middleſex*, was indebted to the ſaid *Samuel Anderson* in twenty Pounds of lawful Money of *Great Britain*, as well for Work by the ſaid *Samuel Anderson* before that Time done and performed for the ſaid *Thomas Trout*, at his ſpecial Inſtance and Requeſt, as for divers Materials and neceſſary Things uſed in and about the ſaid Work, by the ſaid *Samuel Anderson* before that Time found and provided, at the like ſpecial Inſtance and Requeſt of the ſaid *Thomas Trout*; and being ſo indebted, he the ſaid *Thomas Trout*, in Conſideration thereof, afterwards, *to wit*, on the ſame Day and Year, at *Westminster* aforeſaid in the County aforeſaid, undertook, and then and there faithfully promiſed the ſaid *Samuel Anderson*, that he the ſaid *Thomas Trout* would well and truly pay the ſaid twenty Pounds to the ſaid *Samuel Anderson*, when he the ſaid *Thomas Trout* ſhould be thereunto required: And whereas the ſaid *Thomas Trout*, afterwards, *to wit*, on the ſame Day and Year, at *Westminster* aforeſaid in the County aforeſaid, in Conſideration that the ſaid *Samuel Anderson* had before that Time done and performed other Work for the ſaid *Thomas Trout*, at his like ſpecial Inſtance and Requeſt,

Quantum
meruit there-
on.

quest, and had found and provided divers other Materials and necessary Things, used in and about the said last mentioned Work, undertook, and then and there faithfully promised the said *Samuel Anderson*, that he the said *Thomas Trout* would, when he should be thereunto required, well and truly pay to the said *Samuel Anderson* so much Money, as he therefore reasonably deserved to have; and the said *Samuel Anderson* in fact says, that he did therefore reasonably deserve to have of the said *Thomas Trout* other twenty Pounds of like lawful Money of Great Britain, to wit, at *Westminster* aforesaid in the County aforesaid, of which the said *Thomas Trout* then and there had Notice. And also whereas the said *Thomas Trout* afterwards, to wit, the same Day and Year, at *Westminster* aforesaid in the County aforesaid, had accounted together with the said *Samuel Anderson*, touching and concerning diverse Sums of Money before that Time due from the said *Thomas Trout* to the said *Samuel Anderson*, and then being in Arrear and unpaid; and the said *Thomas Trout*, upon the said Account, was then and there found in Arrear to the said *Samuel Anderson* in other twenty Pounds of like lawful Money of Great Britain; and being so found in Arrear, he the said *Thomas Trout*, in Consideration thereof, afterwards, to wit, on the same Day and Year, at *Westminster* aforesaid in the County aforesaid, undertook, and then and there faithfully promised the said *Samuel Anderson*,

Breach

son, that he the said *Thomas Trout* would well and truly pay the said last mentioned twenty Pounds, to the said *Samuel Anderson*, when he the said *Thomas Trout* should be thereunto required: *Nevertheless* the said *Thomas Trout* no ways regarding his said several Promises and Undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Samuel Anderson*, in this Behalf, has not paid the said several Sums of Money, or any Part thereof, to the said *Samuel Anderson*, (although often requested, &c.) but hath hitherto refused and still doth refuse to pay him the same, to the Damage of the said *Samuel Anderson* of thirty Pounds: And thereupon he brings Suit, &c.

William Webb for the Plaintiff.

Edward Dawson for the Defendant.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

Indebitatus
Assumpsit for
Money had
and received
to the Plain-
tiff's Use.

(*As before to*) Was indebted to the said *A. B.* in thirty Pounds of lawful Money of *Great Britain*, for so much Money before that Time had and received by the said *C. D.* for the said *A. B.* and to his Use; and being so indebted, &c.

For Money
laid out for
the Defendant.

Was indebted to the said *A. B.* in forty Pounds of lawful Money of *Great Britain*, for so much Money by the said *A. B.* before that Time laid out and expended for the said *C. D.* at his special Instance and Request; and being so indebted, &c.

Michaelmas

*Michaelmas Term in the Twelfth Year
of King George the Second.*

London, **R**OBERT Parry complains of *Trover.*
to wit. Thomas Hunt being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself; for that that whereas the said Robert Carth. 216.
Parry, on the third Day of *August* in the twelfth Year of the Reign of our Sovereign Lord George the Second, now King of *Great Britain, &c.* at *London* aforesaid, *to wit,* in the Parish of *St. Mary le Bow* in the Ward of *Cheap*, was possessed of the Goods and Chattels following, *to wit,* of one Gold Chain, one Silver Cup, and one Gold Watch, of the Value of Fifty Pounds, as of his own proper Goods and Chattels; and being so thereof possessed, the said Robert Parry, afterwards, *to wit,* on the same Day and Year, at *London* aforesaid in the Parish and Ward aforesaid, casually lost the said Goods and Chattels out of his Hands and Possession, which said Goods and Chattels, afterwards, *to wit,* on the same Day and Year, at *London* aforesaid, in the Parish and Ward aforesaid, came by finding to the Hands and Possession of the said Thomas Hunt: Nevertheless the said Thomas Hunt, knowing the said Goods and Chattels to be the proper Goods and Chattels of the said Robert Parry, and to him the said Robert
I 3 Parry

Parry of Right to belong and appertain, yet contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *Robert Parry* in this Particular, hath not (though often required) delivered the said Goods and Chattels to the said *Robert Parry*, but afterwards, *to wit*, on the sixteenth Day of *August* aforesaid in the Year aforesaid, at *London* aforesaid in the Parish and Ward aforesaid, converted and disposed of the said Goods and Chattels to his own proper Use, to the Damage of the said *Robert Parry* of fifty Pounds: And thereupon he brings Suit, &c.

A. B. for the Plaintiff.

C. D. for the Defendant.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

*Michaelmas Term in the Tenth Year
of King George the Second.*

Assault.

Middlesex, *SAMUEL Page* complains of
to wit. *William Berkin* being in the
Custody of the Marshal of the *Marshalsea*
of our Lord the King, before the King him-
self, for that the said *William Berkin* on the
tenth Day of *October* in the tenth Year of
the Reign of our Sovereign Lord *George* the
Second, now King of *Great Britain*, &c. at
Westminster in the said County of *Mid-*
dlesex, with Force and Arms, *to wit*, with
Staves and Swords, made an Assault upon
the said *Samuel Page*, and beat, wounded,
and

and treated him ill, whereby the said *Samuel Page* was in great Danger of losing his Life, and then and there did other Injuries to the said *Samuel Page*, against the Peace of the present King, to the Damage of the said *Samuel Page* of five hundred Pounds: And thereupon he brings Suit, &c.

Anthony Beckwith for the Plaintiff.

R. Richardson for the Defendant.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

Trinity Term in the Thirteenth Year of the Reign of King George the Second.

Wilts, *WILLIAM N. Esq*; com-*Trespass for*
to wit. *plaintains of Thomas Arlett the digging the*
younger, in the Custody of the Marshal *Plaintiff's*
of the *Marshalsea* of our Lord the King, *Clofe, and carrying away*
before the King himself, for that the said *his Oaker*.
Thomas, on the first Day of *December* in
the Year of our Lord one thousand seven
hundred and thirty eight, and at divers
other Days and Times between that Day
and the Day of exhibiting this Bill with
Force and Arms, &c. broke and entered
the Clofe of the said *William* called the
Common, in the Parish of *Box* in the said
County of *Wilts*, and subverted and dug
up the Soil (*to wit*) twenty Perches of the
Soil of the said *William*, in the said Clofe,
and dug up, took, carried away, and de-
tained the Oaker (*to wit*) fifty hundred

Weight of Oaker of the said *William* of the Value of thirty Pounds found in the said Close, and dug up, took, carried away, and detained other Oaker (*to wit*) fifty hundred Weight of other Oaker of the said *William* of the Value of thirty Pounds found in the said Close; and also for that the said *Thomas* afterwards, that is to say, the same Day and Year aforesaid, and at divers other Days and Times between that Day and the Day of exhibiting this Bill, with Force and Arms, &c. broke and entered one other Close of the said *William*, in the said Parish of *Box* in the County aforesaid, and subverted and dug up the Soil (*to wit*) twenty Perches of the Soil of the said *William*, in the said last mentioned Close, and dug up, took, carried away and detained other Oaker (*to wit*) forty hundred Weight of other Oaker of the said *William* of the Value of five and twenty Pounds found in the said last mentioned Close, and did other Wrongs to the said *William*, against the Peace of our Lord the King, to the Damage of the said *William* of sixty Pounds: And thereupon he brings Suit, &c.

Pledges of Prosecuting { *John Doe,*
Richard Roe.

Cause of Action arising in the same Term with Declaration, the Declaration to be of some Day subsequent.

If the Cause of Action arises on some Day within the Term of which the Declaration is delivered, the Declaration must be of some Day in the Term after the Cause

of Action accrued, in this manner: *Michaelmas* Term, to wit, on *Monday* next after the Morrow of *All Souls* in the twelfth Year of King *George* the Second; and not of *Michaelmas* Term generally.

Battery; Issue and Verdict for the Plaintiff in *Mich. 8 W. 3.* Motion in Arrest of Judgment for that the Declaration is of *Easter* Term *8 W. 3.* and the Fact laid to be done *1 Feb. 8 W. 3.* a Day not yet come (for *W. 3.* began his Reign *13 Feb.*). Answered this not like the Case where Suit commenced before Cause of Action arose, here the Time laid appears to be impossible, and 'tis no more than a Declaration without a Day, for an impossible Day is as no Day, and would have been bad upon Demurrer; but the Defect is cured by the Verdict; a Verdict helps every thing which is necessary to be proved at the Trial; and unless the Plaintiff had proved the Battery to be done before that Time, 'twas impossible for the Jury to find the Defendant guilty. *Judic. pro Q. Carth. 390.*

Trover; and Verdict *pro Quer.* Motion in Arrest of Judgment, that the Action was commenced in *Hilary* Term, and the Conversion alledged to be *3 Feb.* same Term, and the Bill filed relates to the first Day of the Term, and so before the Cause of Action.

Per Cur. If Bail were entered after *3 Feb.* it's well enough, for it is that which gives the Court Jurisdiction. *1 Vent. 135.*

S. C. Trover. Non Cul. Verdict *pro Q.* and Motion in Arrest of Judgment, that Conversion

version was laid at a Day in *Easter Term*, and *Narr.* generally of *Easter Term*, and not at a Day certain, and then must relate to the first Day of Term.

Per Cur. 'Tis well if the Bail was filed after Cause of Action accrued, for here no Action can be depending, or *Narr.* delivered till the Defendant be in *Custodia Mar.* and that is, never till Bail filed, which Filing is at a certain Day. 2 *Lev.* 13.

Trover. Verdict *pro Q.* and Motion in Arrest of Judgment, that Conversion laid 20 *April*, being first Day of *Easter Term*, and *Narr.* was generally *de Termino Paschæ*. But it appearing the Bill was filed, and *Narr.* delivered after 20 *April*, *Judic. pro Q.* without Amendment; for though *Narr.* being general relates to the first Day of the Term; yet the Bill being filed at a Day after, all relates to the Filing of the Bill by the Course of the Court. 2 *Lev.* 176. v. *Cartb.* 113, 171.

The Declaration generally of *Michaelmas Term* for Words spoken 5 *November* (*eodem Termino*) Verdict for Plaintiff, and Judgment arrested. 1 *Show.* 147.

Infant cannot
declare by
Prochein
Amy, or
Guardian,
without Rule
of Court.

If an Infant declares by Guardian, or *Prochein Amy*, the Defendant is not compellable to plead; until the Plaintiff produces a Rule of Court admitting him to declare by *Prochein Amy*, or Guardian.

in the King's Bench.

Between { John West and George West the
younger, Plaintiffs.
John Westcombe, Defendant.

To the Right Honourable Sir William Lee,
Knight, Lord Chief Justice of England,

The humble Petition of John West and
George West the younger, Infants, under
the Age of 21 Years, the Plaintiffs in
this Cause,

Sheweth, **T**HAT your Petitioners have, *Petition to as-*
as they are advised, good *sign an Infant*
Cause of Action against your Defendant *a Guardian.*
John Westcombe, for entering into and taking
the Mesne Profits of a Mesuage or Tene-
ment and Garden belonging to your Peti-
tioners, the Possession whereof they have
lately recovered against him on an Eject-
ment at their Demise, and that your Peti-
tioners have lately brought this Action
against the said John Westcombe in this Ho-
norable Court for such Entry and taking
of the said Mesne Profits; but in regard to
your Petitioners Infancy,

Your Petitioners humbly pray your
Lordship would be pleased to assign
their Father George West the Elder,
as and for your Petitioners Guar-
dian, to prosecute their said Suit or
Action against the said Defendant
J. W.

And your Petitioners shall, &c.

J. W.

G. W. Jun.

Guardian's
Consent.

I do accept and agree to be Guardian to the Plaintiffs *John West* and *George West* the younger, Infants, according to the Prayer of the above Petition. Witness my Hand the 25th Day of *January* 1738.

George West.

In the King's Bench.

Between { *John West and George West the younger, Plaintiffs,*
 { *John Westcombe, Defendant.*

Affidavit of the Infant and Guardian signing the Petition and Consent.

WILLIAM *Vernon*, of the Town and County of *South'ton*, Gentleman, maketh Oath, That *John West* and *George West* the younger, Infants, the Petitioners in the Petition hereunto annexed named, on this present 25th Day of *January* did duly sign the Petition hereunto annexed in this Deponent's Presence; and this Deponent saith, at the same time he was present, and did see *George West* the Elder, the Person mentioned in the said Petition, duly sign the Acceptance or Agreement there under-written, in order to his being a Guardian to the said *J. W.* and *G. W.* the younger.

Sworn at, &c.

William Vernon.

For-

Formerly the Declaration itself used to be delivered to the Defendant's Attorney, to keep till he had made a Copy of it, and then return it; but Inconveniencys arising, a Rule was made *Trinity 12 W. 3.* whereby the Plaintiff's Attorney is only bound to deliver a Copy of the Declaration to the Defendant's Attorney, who is to pay for the same after the Rate of 4*d.* per Sheet, computing seventy-two Words to a Sheet, besides the King's Duty.

And by the same Rule, if the Defendant's Attorney refuses to pay for the Copy of a Declaration, the Plaintiff's Attorney may leave the Copy with the Clerk of the Declarations, who is to receive the same without Fee or Reward; and the Plaintiff's Attorney having given a Rule to plead, and demanded a Plea, may sign Judgment for want of a Plea, and the Plea is not to be received before the Copy of the Declaration is paid for.

Also, If in case of the Absence of the Defendant's Attorney, his Clerk shall refuse to pay for it, or the Place of the Abode of the Defendant's Attorney be unknown to the Plaintiff's Attorney; the Copy of the Declaration may be left in the Office, but Notice thereof is to be given to the Defendant, or his Attorney, and such Copy is not well delivered, but from the Time of such Notice. *Trin. 2 Geo. 2.*

Upon the Delivery of every Copy of a Declaration, or taking the same out of the Office, *torney 4 d. for his Warrant of Attorney, or Judgment.*

Copy of Declaration to be delivered to Defendant's Attorney, who is to pay for the same.

For Non-Payment to be left in the Office, and Plaintiff to proceed.

May be left in the Office, if Place of Abode of Defendant's Attorney is unknown.

Declaration well delivered from Time of Notice only.

Defendant's Attorney to pay Plaintiff's Attorney

Office, the Defendant's Attorney shall pay to the Plaintiff's Attorney 4 *d.* for the Defendant's Warrant of Attorney, which Warrant of Attorney the Plaintiff's Attorney shall file with the proper Officer; and upon the Defendant's Attorney's refusing to pay the said 4 *d.* for the Warrant, Judgment may be signed. *Mich. 5 Annæ.*

Formerly Impar-
lances in
all Cases, ex-
cept.

Formerly the Defendant in all Cases had an Imparlance to the Term next after the Return of the Process, except the Proceedings were by Original, or for or against Attorneys, or other privileged Persons, or against Prisoners in the Custody of the Marshal; in which Cases the Defendant was bound to plead, without any Imparlance, the same Term the Declaration was delivered, (if delivered four Days before the End of the Term) and except the Proceedings were by *Habeas Corpus*, or the Process was returnable the first Return of *Easter* or *Michaelmas* Term, and the Action laid in *London* or *Middlesex*; in which last Case, if the Declaration was delivered before the *Essoin-Day* of *Mens. Pas.* or *Craftinum Animarum*, the Defendant was to plead two Days before the *Essoin-Day* of the subsequent Term. *Mich. 5 Annæ.*

In what Case
Defendant to
plead in four
Days.

But now, by a Rule made in *Trinity* Term 5 & 6 *Geo. 2.* upon all Process to be sued out of this Court, returnable the first or second Return of any Term, if the Plaintiff declares in *London* or *Middlesex*, and the Defendant lives within twenty Miles of *London*, the Declaration shall be delivered

with

in the Court of King's Bench. 127

* *with Notice* to plead within four Days ^{* On back of Declaration.}
after the Delivery, and the Defendant shall
plead within the said four Days without
Imparance; and in case the Plaintiff de- ^{When in eight Days.}
clares in any other County, or the Defen-
dant lives above twenty Miles from London,
the Declaration shall be delivered *with No-*
vice to plead within eight Days after the
Delivery, and the Defendant shall plead
within the said eight Days without any
Imparance; and in Default of Pleading in
either of these Cases, Judgment may be
entered.

In both these Cases the Declaration must ^{Declaration to be delivered 4 Days before the End of the Term.}
be delivered at least four Days before the
End of the Term, exclusive of the Day of
the Delivery, otherwise the Defendant will
be intitled to an Imparance.

Where a Copy of the Process is served, ^{If Bail filed by the Plaintiff, Declaration to be left in the Office, and Notice given.}
and an Appearance is entered, or Common
Bail filed for the Defendant by the Plaintiff's
Attorney, a Copy of the Declaration must
be left in the Office of the Clerk of the
Declarations, and Notice thereof is to be
given to the Defendant, by delivering to,
or leaving for him at his last or most usual
Place of Abode a Note in Writing, signi-
fying the Nature of the Action, at whose
suit prosecuted, and the Time allowed by
the Rules of the Court for pleading thereto;
and that unless such Defendant plead thereto
within such Time, Judgment will be entered
against him by Default; and from the Time
only of giving such Notice, such Declara- ^{Declaration well delivered from Time of Defendant Notice only.}
tion shall be well delivered; and if the

Defendant does not plead within such limited Time, Judgment may be signed without further or other calling for a Plea, and the Plaintiff may thereupon give Notice of executing his Writ of Inquiry, either by delivering a Notice in Writing to such Defendant or Defendants, or by leaving the same at the last or most usual Place of Abode of such Defendant or Defendants. *Trin.*
1 Geo. 2.

In the King's Bench.

Between { M. C. Widow, Assignee of G. H.
Esq; and Sir J. L. Knight, late
Sheriff of Middlesex, Plaintiff,
A N D
T. M. Defendant.

*Notice of a
Declaration
being left in
the Office.*

T. M. TAKE Notice, that a Declaration against you is left in the King's Bench Office in the Temple, with the proper Officer there, as of this present Easter Term, at the Suit of the Plaintiff M. C. Widow, in an Action of Debt upon a Bail-Bond for 72 l. 8 s. and unless you plead thereto in four Days, Judgment will be signed against you by Default, dated this 1st Day of May 1741.

*Charles Rochester,
Attorney for the Plaintiff.*

In the King's Bench.

Between { William Hartley, Plaintiff,
A N D
John Sell, Defendant.

TAKE notice that I have this Day *Another.*
left in the Office of the Clerk of the
Declarations in the *King's Bench* Office in
the *Inner Temple* a Copy of a Declaration
of this present *Michaelmas* Term against
you, at the Suit of the above Plaintiff *Wil-*
liam Hartley, in an Action of Trespass on
the Case, upon several Promises for Goods
fold and delivered to the Plaintiff's Da-
mage 20 l. and unless you plead thereto
within eight Days, Judgment will be signed
against you by Default,

To *John Sell* the
Defendant. *William Howard,*
Attorney for the
Plaintiff, 30th Oct.
1741.

In the King's Bench.

Sarah Williams
Against
John Sculthorp.

TAKE notice that I have left in the *Another.*
Office of the Clerk of the Declara-
tions in the *King's Bench* Office in the *Inner*
Temple, London, a Copy of a Declaration
VOL. I. K against

against you, at the Suit of the Plaintiff *Sarah Williams*, in a Plea of Trespass on the Case upon several Promises, for the Use, Occupation and Enjoyment of a Messuage in *Barking*, in the County of *Essex*; in which Declaration the Plaintiff has laid her Damage to twenty Pounds, and unless you plead to the said Declaration within the first four Days of next *Hilary Term*, Judgment will be signed against you by Default.

To *John Sculthorp*, the Defendant.

Your humble Servant,

Robert Richardson,
Attorney for the Plaintiff,
28th November 1741.

*Of delivering
Declarations
by the By.*

When a Defendant has filed Special or Common Bail, any Person may deliver or file against him a Declaration by the By at any Time (sitting the Court) during the Term wherein the Process against the Defendant was returnable; and I have heard it said, that the Plaintiff, at whose Suit the Process is, might declare against him in as many Actions as he thinks fit, before the End of the next Term after the Return of the Process.

*How in case
Plaintiff file
Common Bail
for the Defendant.*

But for settling the Practice of the Court touching Declaring by the By in Cases where the Plaintiff in any Action or Suit shall file Common Bail for the Defendant, pursuant to the late Act of Parliament for preventing frivolous and vexatious Arrests, It is Ordered, That in all such Cases the Plaintiff

Plaintiff in such Action or Suit, wherein Common Bail hath been or shall be so filed as aforesaid, may deliver a Declaration by the By against such Defendant, in like manner as he might have done by the antient Practice of the Court; but that no other Person (except such Plaintiff) is or shall be capable of delivering a Declaration by the By against any Defendant by reason of Common Bail being so filed by any Plaintiff as aforesaid; and for the better distinguishing by whom Common Bail shall have been filed in any Action or Suit, It is further Ordered, That in all Cases where Common Bail shall be filed by the Plaintiff for the Defendant by Virtue of the said Act, these Words shall be wrote on the Bail-Piece, *viz.* [filed according to the Statute] or Words to the like Effect. *Mich. 20 Geo. 2.*

When common Bail filed by Plaintiff, Bail Piece to be marked.

Upon all Proceſſes to be iſſued out of this Court, returnable the firſt or ſecond Return of any Term where no Affidavit ſhall be made and filed of the Cauſe of Action, purſuant to the late Act of Parliament for preventing frivolous and vexatious Arreſts, the Plaintiff may deliver the Declaration *de bene eſſe*, at the Return of ſuch Proceſs, with Notice to plead within eight Days after the Delivery thereof; and if the Defendant doth not file Common Bail, and plead within the ſaid eight Days, the Plaintiff having filed Common Bail for ſuch Defendant, according to the ſaid Act, may in Judgment for want of a Plea, a Rule

Of Delivering Declarations de bene eſſe. Where no Affidavit of Debt, Declaration to be delivered, with Notice to plead in 8 Days.

Where an Affidavit in four Days, if in London or Middlesex.

to plead having been duly entered ; and upon all Proceſſes to be iſſued, and made returnable as aforeſaid, where an Affidavit ſhall be made and filed of the Cauſe of Action, purſuant to the ſaid Act, the Declaration may be delivered at the Return of ſuch Proceſſes, with Notice to plead in 4 Days after ſuch Delivery, if the Action is laid in *London* or *Middleſex*, and the Defendant lives within twenty Miles of *London*, and in eight Days if the Action is laid in any other County, or the Defendant lives above twenty Miles from *London* ; and if the Defendant puts in Bail, and does not plead within ſuch Time as is reſpectively before mentioned, Judgment may be ſigned, a Rule to plead having been duly entered. *Mich. 10 Geo. 2.*

Delivering a Declaration, unleſs *de bene eſſe*, before Bail is put in, is a Waiver of the Bail.

In an Action requiring Bail, the delivering a Declaration before Bail is put in, is a Waiver of the Bail ; and if before the Bail be juſtified, it is an Acceptance of them ; but if delivered *de bene eſſe*, then it is only conditionally until good Bail be put in, or the Bail already put in do juſtify.

Plaintiff to declare before the End of the ſecond Term, or non proſs'd.

If Proceſſes iſſue out of this Court returnable at a Day certain, and the Defendant doth by his Attorney appear and file Bail of the Term wherein the Proceſſes is returnable, and the Plaintiff doth not declare before the End of the Term next following, a Non-Proſs may be ſigned, without entering any Rule to declare, or calling for a Declaration, and the Defendant

have Costs taxed as usual. *Stat. 13 Car.*

2. c. 2. § 3.

And if the Declaration should be tendered at any Time after the End of the second Term, and before the Non-Pros is signed, the Plaintiff is not bound to accept the Declaration, but may sign his Non-Pros at any Time after the End of the second Term.

Non-Pros may be signed, although Declaration tendered.

Sept

In Case the Proceeding be by Original, the Practice in this Court is the same with the *Common Pleas*; the Defendant must before the End of the second Term, or within four Days after, enter a Rule for the Plaintiff to declare, and demand a Declaration in Writing; and if the Plaintiff don't Declare before the Rule is out, the Defendant may at any Time, before the Effoin-Day of the next Term, sign a Non-Pros, but not afterwards.

Signing Non-Pros when by Original.

If any Person in Custody of the Marshal of this Court, upon Mesne Process shall make his Escape, and be taken and detained in Custody of any Sheriff by Virtue of an Escape Warrant, unless the Plaintiff in such Action do declare against him in Custody of the Sheriff before the End of the second Term next after his being taken on the Escape Warrant, such Person may be discharged by *Superjedeas.*

Time to declare on Escape Warrant.

Trin. 6 Annæ.

The Plaintiff may amend his Declaration after a General Issue pleaded, and before Entry in Matter of Form, without paying Costs, or giving Impar lance.

When Plaintiff may amend in Matter of Form,

paying Costs, or giving an Imparance; but if in Substance, he must pay his Costs, or give an Imparance, at his Election. *Vide Fitz-Gibbon 193.*

If in Substance after Special Plea, must pay Costs. If the Amendment be in Substance after a Special Plea pleaded, the Plaintiff must pay Costs, though he had rather give an Imparance.

On Amendment Defendant to plead de novo, and in what Time. In Cases of Amendment after Plea pleaded, the Defendant has Liberty to plead again, and has two Days for that Purpose, after the Amendment made, and Payment of Costs.

If Rule before in same Term, no new Rule. If a Rule to plead be entered the same Term the Amendment is made, though before such Amendment, it is sufficient, otherwise a new Rule to plead must be entered.

Bill on the File may be amended before Plea. The Plaintiff may amend his Bill upon the File at any Time before Plea pleaded, during the Term of which it is filed, but not afterwards, without Leave of the Court.

New Count not to be added after the Plea, or second Term. The Plaintiff after Plea pleaded, or after the End of the second Term shall not add a new Count to his Declaration (as an *Indebitatus Assumpsit*, or the like) under Pretence of Amending his Declaration.

Plaintiff may Discontinue. If the Plaintiff sees Occasion, he may Discontinue either before or after Declaration delivered by Motion at the Side-Bar, on Payment of Costs.

Of Changing the Venue.

IN Transitory Actions the Plaintiff, after the Effoin-Day of the subsequent Term after the Appearance, shall not alter his own Venue, though he would pay Costs or give an Imparlance.

Plaintiff can't alter Venue after Effoin-Day of second Term.

If the Defendant at any Time before Plea pleaded (*Mich. 1654. Salk. 668, 669. 1 Mod. 2.*) makes Affidavit, that the Cause of Action (if any) arose in the County of *A.* and not in the County of *B.* where the Action is laid, or elsewhere out of the County of *A.* the Court will change the Venue into the County of *A.* But if the Plaintiff will undertake to give Evidence of some Matter in Issue arising in *B.* the Action shall be there continued.

Defendant may have Venue changed before Plea on Affidavit.

How retained.

Salk. 669. — But such Evidence must be material and of the Matter in Issue, as where in Trover and Conversion the Defendant had Leave to change the Venue, the Plaintiff moved to set the Rule aside, offering to be bound to give Evidence in the County where the Action was first laid. On Inquiry the Court found the Plaintiff was an Assignee of Commissioners of Bankrupt, and would prove the Assignment in that County. *Per Cur.* The Conversion is the Cause of Action, and not the Assignment; you are in the Place of the Commissioners, and the Venue was accord-

ing to the Rule. *Ib.* Where a Rule is made to change a *Venue*, and afterwards the Plaintiff would bring it back, the Rule must be *dare aliquam Evidentiam de Materia in Exitu* in the County where the Action is brought. *Ibid.* And if the Plaintiff will be bound to give some material Evidence of the Matter in Issue in the County where the Action is laid, the Court will not change the *Venue*. Where Evi-

Where Evi-
dence arises in
two Countys,
the Plaintiff
may chuse
which he will. *Ibid.*

dence necessary to support the Action arises in two Countys, the Plaintiff may lay the *Venue* in which County he will. *Ibid.*

Not changea-
ble in Scanda-
lum Magna-
tum.

The *Venue* is not changeable in *Scandalum Magnatum*. 1 Lev. 56. *Cartb.* 400. 1 *Vent.* 363. *Salk.* 668.

Nor Escape.

Per Holt C. J. in an Action of Escape, it is not the Course to change the *Venue*. *Salk.* 670.

Nor in Cove-
nant.

The *Venue* is not changeable in an Action of Covenant. 1 Lev. 307.

Nor for a
Lighterman or
Carrier.

An Action against a Lighterman for not delivering Goods was laid in London, where they should have been delivered. It was moved to change the *Venue*, because the Damage and Neglect was in Kent. *Sed non Allocatur*; the Neglect is transitory, and not material where it was, and the Court will never change the *Venue* for a Carrier which is the same Case; otherwise perhaps in *Disceit*, or where there is an actual *Misfeazance*. *Salk.* 670.

Nor in Debt.

Debt for Rent laid in London on a Parol Demise of Lands in Kent. *Raymond, C. J.*

We

We never change the *Venue* in Debt.
Fitz-Gibbon 166.

In Case for a false Return the Action *Nor on a false*
was laid in *Suffolk*, and the Defendant *Return.*
moved to change the *Venue* into *Middle-*
sex, because it would raise Heats in the
County, the Court inclined to do it, but
the Plaintiff would not consent ; therefore
nothing could be done, because he had a
Right to lay it in either County. *Salk.*
669.

It is said, that the *Venue* shall not be *Nor in Deceit;*
changed in Action of Deceit, or the Sta- &c.
ute of Usury, or on a Note of Hand.

In an Action of False Imprisonment a *Venue* shall
against the Sheriffs of *London*, laid in *Mid-* *not be changed*
sex, and changed into *London* on the *where an un-*
common Affidavit, the *Venue* was removed *fair Trial may*
back into *Middlesex*, it being said, that *ensue.*
the Officer of the *Compter* was subject to
the Sheriffs, and so there could be no
good Trial. *Salk.* 670.

In an Action of *Scandalum Magnatum*, But may for
brought by Lord *Shaftsbury*, for Words *the Sake of a*
spoken in *London*, and the *Venue* laid there, *fair Trial.*
it was ruled, by reason of his Lordship's
great Interest in *London*, that the *Venue*
should be changed, with Liberty to lay it
in any other County than *London* or *Mid-*
sex. *Skinner* 40.

The Plaintiff being a Barrister, may lay *Privilege of a*
a transitory Action in the County of *Mid-* *Barrister, as*
sex ; for his Attendance is supposed to *to the Venue.*
be continually in the Court at *Westminster*.
Showers 176. — 1 *Mod.* 64.

If

If the Defendant be a Barrister, he may have the *Venue* changed to *Middlesex*. *Ib.* and *Salk.* 668.

But the Privilege of the Defendant takes not away the Privilege of the Plaintiff; for if both Plaintiff and Defendant be Barristers, and the Plaintiff lays the *Venue* in *Middlesex*, the Court will not change it. *2 Shower* 176.

The *Venue* being changed on the common Affidavit, it was moved on Behalf of the Plaintiff, that he being a Barrister at Law, the *Venue* might be in *Middlesex*, *secundum Privilegium*. And though it was alleged that he had discontinued his Practice, and lived in the County for many Years past, yet because he had been a Practiser here, it was ordered to lie in *Middlesex*. *2 Shower* 242.

Of an Attorney or Officer of the Court.

Said *per Cur.* that an Attorney or Officer of the Court where he is Defendant, has no Privilege concerning the *Venue* (*Sed vide Salk.* 668. *2 Shower* 176. *1 Mod.* 64.) but where he is Plaintiff he has the Privilege to lay his Action in *Middlesex*, and out of the proper County; and the *Venue* shall not be changed upon the common Affidavit, by reason of his Privilege. Justice *Dolben* remembered a Case where the *Venue* was altered upon Affidavit, though an Attorney was Plaintiff, because the Matter did arise, and all the Witnesses lived in remote Parts of the Kingdom. *Carth.* 126. *1 Shower* 148.

If

If an Attorney being Plaintiff lays the Venue in *Middlesex*, the Venue shall not be changed; otherwise if in *London*. *Salk.* 668.

A Clerk of Assize brought an Action of Assault and Battery for a Battery committed in *Kent*, and laid the Action in *Middlesex*; upon common Affidavit the Venue was changed; but upon Motion for the Plaintiff, the Rule was set aside, and the Venue brought back into *Middlesex*. *Salk.* 670.

And said by *Powell, J.* the Privilege ^{Judges Clerks.} extends to Judges Clerks as well as to Serjeants at Law, Barristers and Attorneys. *Ibid.*

Where such Persons sue, or are sued in *Auter Droit* as Executors or Administrators, they lose their Privilege.

Actions upon the Case, Trespas for Goods, Assault or Imprisonment arising in any *English* County, are to be laid in their proper Countys, unless they arise where the Justices of Assize seldom come. ^{Actions on the Case, &c. to be laid in their proper Countys, unless, &c.}

And because Trespas and Trover for Goods, Battery, Imprisonment, and Slander, must needs be notorious in what County they arise, the Attorney knowingly laying them out of their proper County (unless in the Cases before expressed, or for such other Causes as shall be allowed by the Judges of the Court, and duly appear to be true) shall be severely punished. ^{Attorneys acting otherwise, to be punished.}

Mich. 1654.

*Venue may
be changed be-
fore Plea.*

Before Plea upon Oath made, the *Venue* may be changed upon Motion in the said transitory Actions, and the Defendant to plead to the new Action as he should have done to the other without Delay. *Same Rule.*

*Though De-
fendant comes
in by Exigent.*

The *Venue* may be changed (upon Oath) as before, though the Defendant come in by Exigent. *Same Rule.*

Pleas.

Ileas.

PLEAS are either General or Special; a general Plea is a concise direct Answer to the Plaintiff's Declaration, must be written on Paper, with a double Penny Stamp, and delivered to the Plaintiff's Attorney; but if his Place of Abode be unknown to you, it may be entered in the General Issue Book, kept by the Clerk of the Doggets, for which you pay 4 *d.* and you pay the Plaintiff's Attorney 1 *s.* for the Entry.

General Issues.

*Non est Fac-
tum to a Bond.*

And the said C. D. by R. R. his Attorney, comes and defends the Force and Injury, when, &c. and says, that he ought not to be charged with the said Debt, by
Means

Means of the said Writing obligatory, because, he says, that the said Writing obligatory is not his Deed ; and of this he puts himself upon the Country.

And the said *Mary*, by *A. B.* her Attor-^{Non est Fac-}ney, comes and defends the Force and In-^{tum Testato-}jury, when, &c. and says, that she ought^{ris.} not to be charged with the said Debt by Virtue of the said Writing, because she says, that the said Writing is not the Deed of the said Sir *John Stapley* : And of this she puts herself upon the County.

And the said *C. D.* by *A. B.* his Attor-^{Nil Debet}ney, comes and defends the Force and Injury, when, &c. and says, that he does not owe to the said *A. B.* the aforesaid 500 *l.* or any Part thereof, in Manner and Form as the said *A. B.* above complains against him : And of this he puts himself upon the Country.

And the said *C. D.* by *R. R.* his Attor-^{Non assump-}ney, comes and defends the Force and In-^{sit.}jury, when, &c. and says, that he did not undertake in Manner and Form as the said *A. B.* above complains against him : And of this he puts himself upon the Country.

And the said *John* and *Mary*, by *W. R.* ^{Testator non}their Attorney, come and defend the Force ^{Assumpsit.} and Injury, when, &c. and say, that the said *Joseph Wilson* in his Life-time did not undertake in Manner and Form as the said *William* thereof above complains against them : And of this they put themselves upon the Country, &c.

And

Non Cul. in Case. And the said *C. D.* by *T. L.* his Attorney, comes and defends the Force and Injury, when, &c. and says, that he is in nothing guilty of the Premisses above laid to his Charge, as the said *A. B.* above complains against him: And of this he puts himself upon the Country.

Non Cul. in Trespass. And the said *C. D.* by *W. L.* his Attorney, comes and defends the Force and Injury, when, &c. and says, that he is not guilty thereof: And of this he puts himself upon the Country.

Son assault. And the said *Thomas*, by *T. G.* his Attorney, comes and defends the Force and Injury, when, &c. and as to the Coming with Force and Arms, or whatsoever that is against the Peace of our Lord the now King, the said *Thomas* says, that he is not guilty thereof: And of this he puts himself upon the Country. And the said *Richard* likewise, &c. And as to the Residue of the Trespass above supposed to be done, the said *Thomas* says, that the said *Richard* ought not to have or maintain his said Action thereof against him, because he says, that the said *Richard*, at the said Time in which the said Trespass is above supposed to be done, at *Lewes* in the County aforesaid, with Force and Arms, &c. made an Assault upon the said *Thomas*, and then and there would have beaten, wounded, and ill treated the said *Thomas*, if he the said *Thomas* had not then and there presently defended himself against the said *Richard*; whereupon the said

Thomas

Thomas then and there defended himself against the said *Richard* ; and so the said *Thomas* says, that the Mischief or Damage, if any then and there happened to the said *Richard*, it was on the proper Assault of the said *Richard*, and in the Defence of the said *Thomas* : And this the said *Thomas* is ready to verify : Wherefore he prays Judgment, if the said *Richard* ought to have or maintain his said Action against him.

And the said *Richard* says, that he ought not, by any thing by the said *Thomas* above in Pleading alledged, to be barred from having his said Action for the Residue of the said Trespass against the said *Thomas* ; because he says, that the said *Thomas*, on the Day and Year aforesaid in the said Declaration mentioned, at *Lewes* aforesaid in the County aforesaid, of his own proper Injury, without any such Cause as by the said *Thomas* is above in Pleading alledged, made an Assault upon the said *Richard*, and beat, wounded and ill treated him the said *Richard*, in Manner and Form as the said *Richard* above complains thereof against the said *Thomas* : And this, he prays, may be inquired of by the Country ; and the said *Thomas* likewise, &c. Therefore, as well to try that Issue, as the said other Issue above-joined, between the said Parties, let a Jury come thereupon before our Lord the King, at *Westminster*, on *Thursday* next after three Weeks of the Holy Trinity, and who are in no wise of Kin either

Replication de Injuria sua propria.

Award of Ven. fac. to try two Issues.

either to the said *Richard*, or to the said *Thomas*, to take Cognizance upon their Oaths, of the whole Truth of the Premises ; because as well the said *Thomas*, as the said *Richard*, have put themselves upon that Jury. The same Day is given to the Parties aforesaid, at the same Place.

Non infre-
git Conven-
tionem.

And the said *John Knap*, by *Thomas Harvey* his Attorney, comes and defends the Force and Injury, when, &c. and says, that he did not break the said Covenants, nor any one of them, in Manner and Form as the said *William Simpson* above complains thereof against him : And of this he puts himself upon the Country.

Plene admini-
stravit by an
Executor.

And the said *Mary*, by *Walter Jobber* her Attorney, comes and defends the Force and Injury, when, &c. and says, that the said *Sarah* ought not to have or maintain her said Action thereof against her the said *Mary*, because she says, that the said *Mary* hath fully administred all and singular the Goods and Chattels, which were the Goods and Chattels of the said *William Bury* at the Time of his Death, in her Hands to be administred ; and that the said *Mary* has not, nor at the Time of exhibiting the Bill aforesaid, or at any Time since, had any Goods or Chattels which were the Goods and Chattels of the said *William Bury* at the Time of his Death, in her Hands to be administred, whereby the said *Sarah* might have been satisfied of the Damages aforesaid, or any Part thereof.

of : And this she the said *Mary* is ready to
 verify : Wherefore she prays Judgment,
 whether the said *Sarah* ought to have or
 maintain her Action afore said thereof a-
 gainst her, &c.

And the said *Sarah* says, that she, by *Replication.*
 reason of any thing by the afore said *Mary*
 above by Pleading alledged, ought not to
 be barred from having her said Action a-
 gainst her the said *Mary*, because she says,
 that the said *Mary* has, and at the Time of
 exhibiting the Bill afore said, that is to
 say, on the Day of in the

Year of the Reign of our Sovereign
 Lord George the Second, now King of
 Great Britain, &c. at *Westminster* in the
 County afore said, had divers Goods and
 Chattels, which were the Goods and Chat-
 tels of the said *William Bury* at the Time
 of his Death, in her Hands to be admini-
 stered, sufficient to satisfy the said Damages,
 whereof she the said *Sarah* might have been
 satisfied her Damages afore said : And she
 prays, that this may be inquired of by the
 Country ; and the said *Mary* likewise, *Issue.*

&c. Therefore let a Jury come there- *Venire facias*
 upon before our Lord the King, at *West-* *awarded.*

minster, on next after
 and who are in no wise of Kin either to
 the said *Sarah*, or to the said *Mary*, to
 take Cognizance, upon their Oaths, of the
 whole Truth of the Premises ; because as
 well the said *Mary*, as the said *Sarah*, have
 put themselves upon that Jury. The same
 Vol. I. L Day

Day is given to the Parties aforesaid at the same Place.

Plene admin-
istravit
præter 17 l.
Lilly's En-
tries 475.

And the said *Edward Tanner*, by B. H. his Attorney, comes and defends the Force and Injury, when, &c. and says, that the said *Richard* ought not to have or maintain his said Action thereof against him, because he says, that he has fully administered all the Goods and Chattels which were of the said *Anthony Tanner* at the Time of his Death in his Hands to be administered, except Goods and Chattels to the Value of seventeen Pounds; and that he the said *Edward* has no Goods or Chattels which were of the said *Anthony* at the Time of his Death in his Hands to be administered, nor had on the Day of exhibiting the said Bill of the said *Richard*, nor at any Time afterwards, except the said Goods and Chattels to the Value of the said seventeen Pounds: And this he is ready to verify: Wherefore the said *Edward* prays Judgment, if the said *Richard* ought to have or maintain his said Action against him, except of the said seventeen Pounds, &c.

Repl. praying
Judgment for
the 17 l. and
Damages.

Judgment.

And the said *Richard*, as to the said seventeen Pounds which the said *Edward* acknowledges to have in his Hands to be administered, prays Judgment; and that the said seventeen Pounds, together with his Damages by Occasion of detaining the said seventeen Pounds, may be adjudged to him: It is therefore considered, that the said *Richard* recover against the said *Ed-*

ward the said seventeen Pounds of the Goods and Chattels which were of the said *Anthony*: And the said *Edward* in Mercy, &c.

And as to the Residue of his said Damages, *And Repli. at.*
 he said *Richard* says, that by any thing *further Assets.*
 before alledged, he ought not to be barred
 from having his Action thereof against the
 said *Edward*; because, as to the said Plea
 of the said *Edward* above pleaded, the said
Richard says, that on the Day of exhi-
 biting the Bill of the said *Richard*, to wit,
 on the seventeenth Day of *May* in the
 thirteenth Year of the Reign of our said
 Lord the King, the said *Edward* had over
 and above the said Goods and Chattels to
 the Value of the said seventeen Pounds,
 diverse Goods and Chattels, which were of
 the said *Anthony* at the Time of his Death,
 in his Hands to be administered, to the
 Value of the Residue of his said Damages,
 out of which he could thereof have satis-
 fied the said *Richard*, to wit, at *Southwark*
 aforesaid in the aforesaid County: And
 thus he prays may be inquired of by the
 Country: And the said *Edward* likewise, *Issue.*

&c. And because it is convenient that *Unica Taxa*
 there be one Taxation in this Behalf of the *tio.*
 Damages, if Judgment happens to be given
 for the said *Richard* for the said Residue
 of the said Damages: Therefore let the
 Taxation of Damages for not paying the
 said seventeen Pounds, which the said *Ed-*
ward has acknowledged to have in his
 Hands to be administered, cease until the

Venire awarded.

Impar lance.

Two Defendants plead Non Assumpser.

Third Defendant pleads double Non Assump.

Issue above joined between the said Partys, be try'd and determined; and for trying the said Issue, let a Jury thereupon come before our Lord the King at *Westminster*, on next after

and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the said Partys there, &c.

And now at this Day, to wit, on *Friday* next after the Morrow of the Holy *Trinity*, in this same Term, to which Day the said *John Combes*, *John Foster*, and *Charles Wilkinson* had leave to imparl to the said Bill, and then to answer, &c. before our Lord the King at *Westminster*, came as well the said *Elizabeth*, by her Attorney afore-said, as the said *John Combes*, *John Forster*, and *Charles Wilkinson* by *G. W.* their Attorney, and the said *John Combes*, *John Forster*, and *Charles Wilkinson*, defend the Force and Injury; when, &c. — And the said *John Combes* and *John Forster* say, that they did not undertake in Manner and Form as the said *Elizabeth* above complains against them: And of this they put themselves upon the Country: And the said *Elizabeth* does so likewise, &c. And the said *Charles* says, that the said *Elizabeth* ought not to have or maintain her said Action against him, because he says, that he did not undertake in Manner and Form as the said *Elizabeth* above complains against him: And of this he puts himself upon the County: And the said *Elizabeth* does so likewise. And the said *Charles*, by

Leave

Leave of the Court here, and according ^{And Bank-} to the Form of the Statute in such Case ^{ruptcy.} lately made and provided, further says, <sup>Lilly's En-
trys 106.</sup> that the said *Elizabeth* ought not to have her said Action against him the said *Charles*, because he says, that he the said *Charles*, after the twenty-fourth Day of *June* in the Year of our Lord One thousand Seven hundred and Six, to wit, on the seventh Day of *September* in the first Year of the Reign of our sovereign Lord *George*, now King of *Great Britain*, at *London* aforesaid, in the Parish and Ward aforesaid, became a Bankrupt within the several Statutes made against Bankrupts; and the said *Charles*, according to the Form of the Statute lately made and provided, further pleads and says, that the Cause of the said Action above specified in the said Declaration, accrued to the said *William* in his Lifetime, before the said Time in which he the said *Charles* so as aforesaid became a Bankrupt: And of this he puts himself upon the Country, &c.

And the said *Elizabeth*, as to the ^{Replication} said Plea of the said *Charles* last plead- ^{confessing the} ed, says, that true it is, that the said ^{Bankruptcy;} *Charles* became a Bankrupt in Man- ^{but avers, that} ner and Form as the said *Charles* by his ^{he together} Plea last mentioned has alledged; but the ^{with the other} said *Elizabeth* further says, that the said ^{Defendants,} *Charles*, together with the said ^{&c. super se} *John Combes* ^{Assumpser,} and *John Forster*, undertook in Manner and Form as the said *Elizabeth* above com-
L 3 plains

plaints against them: And this she is ready to verify, and she prays Judgment, and her Damages by Occasion of the Premisses to be adjudged to her, &c. and upon this the said *Elizabeth* prays, that the said *Charles* may rejoin to her last Replication. Upon this a Day is given to the said *Charles* before our Lord the King at *Westminster* until *Friday* next after the Octave of *St. Martin* thence next ensuing, to rejoin, &c. At which Day before our Lord the King at *Westminster* the said *Elizabeth* came by her Attorney aforesaid; And the said *Charles* at that Day, although solemnly demanded, came not, but made Default; and says nothing else in Bar or Preclusion of the said Action of the said *Elizabeth*, by which the said *Elizabeth* remains thereof undefended against the said *Charles* as to the last Plea, &c. Therefore, as well to try the said several Issues above joined between the said *Elizabeth* and the said *John Combes*, *John Forster*, and *Charles Wilkinson*, as to inquire what Damages the said *Elizabeth* has sustained by the said *Charles* by Occasion of the Premisses, if a Verdict shall happen to be given in the said Plea for the said *Elizabeth*; let a Jury come before our Lord the King at *Westminster* on *Wednesday* next after the Octave of *St. Hilary*; and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Partys aforesaid at the same Place, &c.

Third Defendant makes Default.

Venire facias
tam ad triand
quam ad In-
quirend.

Judgment

Judgment for the Plaintiff affirmed on a Writ of Error in the Exchequer Chamber.

Mich. 4 Geo. 1.

And the said *John Oufman*, by *Thomas Harvey* his Attorney, comes and defends ^{Non Cul. in-}fra sex An-
the Force and Injury; when, &c. and ^{nos.}
says, that the said *Richard Gibson* ought ^{Lilly's En-}trys 483.
not to have or maintain his said Action
against him, because he says, that the
said Bill of the said *Richard* was exhibited
on the twenty-third Day of *October* in
the third Year of the Reign of our Sove-
reign Lord *George* the Second, now King
of *Great Britain*, &c. and not before;
and that he the said *John* at any Time
within six Years next before the exhibiting
the said Bill of the said *Richard*, was in
no wise guilty of the Premises above laid
to his Charge, as the said *Richard* above
thereof complains against him: And this
the said *John* is ready to verify: Where-
fore he prays Judgment, if the said *Rich-*
ard ought to have or maintain his said
Action against him, &c.

And the said *Thomas*, by — *Pock-* ^{Non Dimisit.}
ington his Attorney, comes and defends
the Force and Injury, when, &c. and
says, that the said *William* ought not to
have or maintain his said Action against him
the said *Thomas*, because he says, that the
said *William Pentlowe* did not demise to
the said *Thomas Wilson* the said Tenements
with the Appurtenances in Manner and
Form as the said *William Pentlowe* above

Non Deti-
net.

complains against him: And of this he puts himself upon the Country.

And the said *William Jones*, by *John Howard* his Attorney, comes and defends the Force and Injury, when, &c. and says, that he does not detain from the said *John Roberts* the said Goods and Chattels in the said Declaration specified, or any Part of them, in Manner and Form as the said *John Roberts* above complains against him: And of this he puts himself upon the Country.

Comperuit
ad Diem to a
Bail-Bond.
Lilly's En-
trys 498.
Oyer.

And the said *Robert Tebbut* the younger, by *R. R.* his Attorney, comes and defends the Force and Injury, when, &c. and prays Oyer of the said Writing obligatory; and it is read to him, &c. he also prays Oyer of the Condition of the said Writing; and it is read to him in these Words, to wit, The Condition of this Obligation is such, to wit, &c. Which being read and heard, the said *Robert Tebbut* the younger says, that they they said *Emery* and *John* ought not to have or maintain their said Action against him, because he says, that after the making the said Writing obligatory, and before the Day of exhibiting the said Bill of the said *Emery* and *John*, to wit, on *Monday* next after three Weeks of *St. Michael* next ensuing the Date of the said Writing obligatory in the said Condition above mentioned, he the said *Robert Tebbut* the younger, in the said Condition above named, appeared before our Lord the King at *Westminster*,

before

to answer the said *Emery* and *John* of the said Plea of Trespass, and also to the Bill of the said *Emery* and *John* against the said *Robert Tebbut* the younger for eight hundred Pounds upon Promise, according to the Form and Effect of the said Condition: And this he is ready to verify by the Record of that Appearance remaining in the Court of our said Lord the King before the King himself: Wherefore he prays Judgment, if the said *Emery* and *John* ought to have or maintain their said Action against him, &c.

And the said *Emery* and *John* say, ^{Replication} that they, by any thing by the said ^{Nul tiel Record.} *Robert Tebbut* the younger above by Pleading alledged, ought not to be barred from having their said Action against him, because they say, that there is not any such Record of the said Appearance of the said *Robert Tebbut* the younger, before our said Lord the King in the said Court of our said Lord the King, before the King himself at *Westminster*, on the said *Monday* next after three Weeks of *St. Michael*, according to the Form and Effect of the said Condition, as the said *Robert Tebbut* the younger hath above by Pleading alledged: And this they are ready to verify: Wherefore they pray Judgment and their said Debt, together with their said Damages by occasion of detaining that Debt, to be adjudged to them, &c.

Rejoinder

And the said *Robert Tebbut* the younger ^{Habetur tale Record.} says, that there is such a Record of the said

said Appearance of the said *Robert Tebbut* the younger in the said Court of our said Lord the King, before the King himself at *Westminster* aforesaid, on *Monday* next after three Weeks of *St. Michael* next ensuing the Date of the said Writing obligatory, remaining in the said Court of our said Lord the King before the King himself at *Westminster* aforesaid, as he the said *Robert Tebbut* the younger has by pleading alleged : And this he is ready to verify by that Record, &c. Therefore the said *Robert Tebbut* the younger is commanded to have the said Record here on *Thursday* next after at his Peril, &c.

Day given to
bring in the
Record.

Def. defecit
de Recordo.

Judgment
thereon.

The same Day is given to the said *Emery* and *John* there, &c. At which Day before our Lord the King at *Westminster* the said Partys came by their Attorneys aforesaid ; and the said *Robert* has not here in Court the Record of the said Appearance by him in Form aforesaid above alleged, but made Default therein : It is therefore considered, that the said *Emery* and *John* recover against the said *Robert* their said Debt, and also sixty-three Shillings for their Damages which they have sustained as well by Occasion of detaining that Debt, as for their Costs and Charges by them about their Suit in this Behalf expended, by the Court of our said Lord the King now here adjudged to the said *Emery* and *John* by their Assent : And the said *Robert* in Mercy, &c.

And

And the said *James Silverlock*, by *L. R.* Infra *Æta-*
tem to Af-
sumpsit for
Taylor's Work.
Lilly's En-
trys 107.
his Attorney, comes and defends the
Force, when, &c. and says, that the said
John Thomson ought not to have or main-
tain his said Action against him, because
he says, that he the said *James Silverlock*,
at the Time of making the several Pro-
mises and Undertakings in the said Decla-
ration above mentioned, was within the
Age of one and twenty Years : And this
he is ready to verify : Wherefore he prays
Judgment, if the said *John Thomson* ought
to have or maintain his said Action against
him, &c.

And the said *John Thomson* says, that Replication
he, by any thing by the said *James Silver-* that they were
lock above by Pleading alledged, 'ought for Necessarys.
not to be barred from having his said Action
against the said *James*, because he says,
that the said thirty Pounds expended and
laid out by the said *John* for the said *James*,
and the said *Taylor's Work* done and per-
formed by the said *John*, together with
the Materials and necessary Things used in
and about that Work, and by the said
John for the said *James* in Form afore-
said found and provided, were expended
and laid out, done and performed, found
and provided by the said *John* at *London*
aforesaid, in the Parish and Ward afore-
said for the necessary Apparel and Cloath-
ing of the said *James*, his Degree requiring
same : And this he is ready to verify :
Wherefore he prays Judgment, and his
said

said Damages by occasion of the Premises, to be adjudged to him, &c.

Edward Northey.

*Rejoinder not
for Necessarys.*

And the said *James* says, that the said thirty Pounds by the said *John* laid out and expended, and the said Taylor's Work by the said *John* done and performed, together with the Materials and necessary Things used in and about that Work, and by the said *John* for the said *James* in Form aforesaid found and provided, were not for the necessary Apparel and Cloathing of the said *James*, in Manner and Form as the said *John* has above by replying alleged: And of this he puts himself upon the County.

F. Pemberton.

*Term's Notice
to plead after
four Terms
are elapsed.*

If four Terms be elapsed after the Declaration is delivered, the Defendant shall have a whole Term's Notice to plead, before Judgment can be entered against him, unless the Cause has been stayed by Injunction or Privilege.

*Two Days after
Amendment,
to alter
or vary the
Plea.*

If the Plaintiff amends his Declaration, the Defendant shall have two Days, exclusive of the Day of Amendment, to alter his first Plea, or plead any other.

*When Defendant
may vary
his Plea.*

A Defendant having pleaded to Issue, and the Plaintiff neglecting to enter the Issue the same Term the Issue is joined, the Defendant, within the first 5 Days of next Term, may alter his Plea or Demurret, and plead another Plea if he pleases.

in the Court of King's Bench. 157

If an Infant be sued, he can't regularly plead by Guardian, until admitted so to do by some Judge of the Court, and such Admittance made a Rule of Court. But if he should, it is only a Misdemeanor in the Attorney, but not Error.

When the Dispute betwixt the Plaintiff and Defendant is only how much is due to the Plaintiff, and not whether any thing at all is due to him, the Defendant, before he pleads, must move the Court to pay into Court what is really due to the Plaintiff; and upon such Motion the Court will order, that the Defendant shall have Leave to bring into Court the Sum the Defendant moves to pay in; and thereupon, unless the Plaintiff shall accept thereof, with Costs to be taxed by the Master, in full Discharge of the Suit, the said five Pounds shall be struck out of the Declaration, and paid out of Court to the Plaintiff, or his Attorney; and upon the Trial of the Issue, the Plaintiff shall not be permitted to give Evidence for the said Sum so paid in. After having drawn up the Rule, you pay the Money to the Signer of the Writs, who acts as Clerk or Agent to the Secondary herein, the Secondary being by Rule of Court made *Pas. quinto Jacobi* 1. the Officer appointed for that Purpose.

After the Defendant has paid in the Money, he must serve the Plaintiff's Attorney with the Rule, and give him the

The Effect and Consequence of paying Money into Court. General Issue. And if the Plaintiff accepts the Money in full Discharge of Suit, he shall have his Costs to the Time the Money is paid in. But if he will not accept it in full Discharge, he may take the Money out of Court in Part of his Demand, and go on with the Action. But if on the Trial he does not obtain a Verdict for a greater Sum than was paid into Court, he will be Nonsuited, and must pay Costs to the Defendant. *Vid. Salk. 5. 579.*

Money not to be paid into Court without Leave. No Sum, how small soever, to be paid into Court without Leave to be obtained on Motion.

If Suit by Original, need not plead till Oyer of Original. The Defendant is not bound to plead to a Declaration by Original, till Oyer and a Copy of the Original is given him, if he demands it. But I have been refused it in the *Common Pleas*, where I have heard a Defendant has received some Relief upon proposing a Bill of Exceptions.

And Oyer of Deeds, &c. pleaded by Profert in Curia. If the Plaintiff in his Declaration makes a *Profert in Curia* of any Deed, or other Writing, Letters of Administration, or the like, the Defendant may pray Oyer thereof, and must have a Copy delivered him, paying for the same after the Rate of Four-

Time to plead after. pence per Sheet, besides Stamp-Duty, and shall have such Time after to plead, as he had when he demanded Oyer.

On pleading a Record in the same Court, the Defendant must give Oyer if demanded. Plea in Abatement, another Action depending in this Court, Counsel craved Oyer of the Record, and moved, that unless the Defendant gave Oyer the next Day, the Plaintiff might sign Judgment.

Holt, C. J. Where a Record of the same Court is pleaded in Abatement, and the Plaintiff demands Oyer of that Record, and it is not given him in convenient Time, the Plea ought not to be received, but the Plaintiff may sign his Judgment on Rule. *Judic. pro Q. Nisi.* Oyer the next Day. Carth. 453.

Plea in Abatement, another Action depending for the same Matter in this Court. *On Replication of Nul tiel Record no Occasion for a Rejoinder.*
Replication. Quod non habetur aliquod tale Recordum, & petit quod Recordum illud, &c. inspiciatur, without giving the Defendant Liberty to rejoin, *Quod habetur tale Recordum.*

Demurrer.

Judic. pro Q. being a Record of the same Court, the Plaintiff might pray that it might be inspected by the Court, as in *Dier* 27, 228. which was the Plaintiff's Precedent in this Case.

Per Cur. *Upon this Plea the Plaintiff might have prayed Oyer of the Record, and for want of Oyer signed Judgment, which is the quickest Method of Proceeding.* Carth. 517.

If a Defendant is bound by a Rule or Order of Court, to plead by a Time there- *When Defendant must plead without a Demand of a Plea.*
 a limited, it is incumbent on him to plead by such Time, although the Plaintiff does not enter any Rule to plead, or call for a Plea.

Upon giving any General Issue, or General Demurrer to any Declaration (before any special Demurrer or special Plea pleaded) the Plaintiff's Attorney shall deliver to *Copy of General Issue or Demurrer to be delivered, and paid for at Four-pence per the Sheet.*

*Otherwise
Judgment.*

the Defendant's Attorney a Copy of such Issue, or of the Demurrer-Book; and the Defendant's Attorney shall pay for the same, besides the Duty, after the Rate of Four-pence *per* Sheet, computing 72 Words to every Sheet. And if the Defendant's Attorney shall not pay for such Copy of any General Issue or Demurrer, and for the Stamps, upon the Tender of the same, the Plaintiff's Attorney may sign his Judgment, as if no Plea or Demurrer had been given or pleaded. *Trin. 12 W. 3. v. Salk. 4. pl. 11.*

Special Pleas. Special Pleas, which set forth the Matter pleaded at large, must be signed by Counsel, and are of two Sorts, in Abatement and Bar.

A Plea in Abatement. A Plea in Abatement, often merely dilatory, is not a Plea to the Action, but to the Bill or Writ (if by Original.)

In Bar. A Plea in Bar is to the Action, and destroys it for ever.

Causes of Abatement. Pleas in Abatement are for many Causes; as for that the Plaintiff is an Alien Enemy, is outlawed or excommunicated, Privilege in the Defendant as being an Attorney of the *Common Pleas*, or the like, Variance between the Original and Declaration, for that the Testator made two Executors, and but one is named in the Bill; for *misnomer*, *caus multis aliis*.

That the Defendant is Administrator, and not Executor. And the said Robert Parry, by Robert Richardson his Attorney, comes and defends the Force and Inquiry, &c. and prays Judgment of the Bill aforesaid, because he says

says, that the said *William Hunt*, upon the tenth Day of *November* in the Year of our Lord 1729, at *Westminster* aforesaid, died intestate; after whose Death, Administration of all and singular the Goods and Chattels, Rights and Credits, which were the said *William Hunt's* at the Time of his Death, by *William*, by Divine Providence, Archbishop of *Canterbury*, Primate of all *England*, and Metropolitan, on the 22d Day of *January* in the Year of our Lord 1729, at *Westminster* aforesaid, in due Form of Law was committed to the said *Robert*; in which Case the said *Francis* ought to have named the said *Robert*, in his said Bill, Administrator of the Goods and Chattels, Rights and Credits, which were the said *William's* at the Time of his Death, who died intestate, and not Executor of the last Will and Testament of the said *William*: And this he is ready to verify: Wherefore he prays Judgment of the Bill aforesaid, and that the said Bill may be quashed; with this, That the said *Robert* will verify, That he did not administer any Goods or Chattels, Rights or Credits of the said *William*, before the said Administration committed to him as aforesaid.

And the said *Elizabeth*, by *Arthur Stone* That Defendant is Executor and Injury, &c. and saith, that the aforesaid *Thomas Mason*, in his Life-time, to wit, on the twenty-ninth Day of *November* in the Year of our Lord one thousand seven hundred and twenty-nine, at the Parish
VOL. I. M aforesaid

aforesaid in the County aforesaid, made his last Will and Testament, and thereby constituted and appointed the said *Elizabeth* sole Executrix of the said Testament; and afterwards the said *Thomas Mason* died there, after whose Death the said *Elizabeth*, at the Parish aforesaid, took upon her the Burthen and Execution of the said Testament, and proved the same in due form of Law, without this, that the said *Thomas Mason* died intestate, as is above supposed by the said Bill: And this she is ready to verify: Wherefore because the said *Elizabeth*, in the said Bill, is not named Executrix of the Testament of the said *Thomas Mason*, the said *Elizabeth* prays Judgment of the said Bill, and that the said Bill may be quashed.

Vide *Salk.* 296. 4. 297. 8. *Carib.* 369. *Lilly's Entrys* 5.

No dilatory
Plea without
an Affidavit of
the Truth of it.

No dilatory Plea shall be received, unless the Party offering such Plea does by Affidavit prove the Truth thereof, or shew some probable Matter to the Court, to induce them to believe that the Fact of such dilatory Plea is true. *Stat.* 4 & 5 *Annæ* Amendment of the Law.

Affidavit of
the Truth of a
Plea in Abate-
ment.

Robert Parry of the Strand in the County of *Middlesex*, Perfumer, Defendant in this Cause, maketh Oath, and saith, that *William Hunt*, mentioned in the Plaintiff's Declaration in this Cause, died intestate, and this Deponent verily believes; and this Deponent says, he never heard or knew that the said *William* made any Will, or ap-
pointed

pointed any Executor, and that on the 22d Day of *January* in the Year of our Lord one thousand seven hundred and twenty-nine, Administration of all and singular the Goods, Rights and Credits, which were the said *William Hunt's* at the Time of his Death, was duly granted to this Deponent by *William*, by Divine Providence, Archbishop of *Canterbury*, Primate of all *England*, and Metropolitan. And this Deponent saith, that he did not administer any of the Goods, Chattels, Rights or Credits, which were of the said *William Hunt's*, at the Time of his Death, before the granting the said Administration to this Deponent, as aforesaid. And this Deponent further saith, that the Substance and Matter of Fact contained in the Plea hereunto annexed, are true.

And the said *Lady Honoria Gerard*, a-Misnomer against whom the said *Thomas* hath exhibited his Bill by the Name of *Lady Elizabeth Gerard*, otherwise *Garret*, comes in her proper Person, and defends the Force and Injury, &c. and prays Judgment of the said Bill, because she says, that she was baptized by the Name of *Honoriam*, to wit, in the Parish of *St. Clement Danes* aforesaid, and from her Baptism hitherto has been always known and named by that Name, without this, that she the said *Honoriam* now or ever was, known or named by the Name of *Elizabeth*, as by the said Bill is above supposed: And this she is ready to verify: Wherefore she prays Judgment of

pleaded in A-
batement.

the said Bill, and that the said Bill may be quashed.

Misnomer ill
pleaded.

Et præd' Johannes Germyn venit & defendit, &c. & dicit, that his Name is Germyn Demurrer. *Et Judic. pro Quer.* The Defendant should have pleaded it thus :

Et præd' Johannes Germyn qui per nomen Johannis Germyn superius implacitatur venit & dicit, &c. Carth. 207.

Infancy by
Guardian.

And the said *Anne*, who is within the Age of Twenty-one Years, by R. C. her Guardian, by the Court of our said Lord the King now here specially admitted, comes and defends the Force and Injury, &c. and prays Judgment of the said Bill ; because, she says, that she the said *Anne* was, on the Day of exhibiting the said Bill, and is now, within the Age of Twenty-one Years, *to wit*, of the Age of nineteen Years, and not more, *to wit*, at London aforesaid, in the Parish and Ward aforesaid ; and that the said *Richard* prosecuted his said Bill against her the said *Anne*, neither by her next Friend, nor by her Guardian : And this she is ready to verify : Therefore she prays Judgment of the said Bill, and that the said Bill may be quashed, &c.

When the Defendant must
plead in Abatement of the
Declaration,
and when of
the Bill.

You may plead in Abatement of a Declaration where it is by Original, for the Pleas there are different ; but if the Action is by Bill, you cannot plead in Abatement of the Declaration, but only of the Bill, for they are the same thing ; and therefore the Entry in such case is *Pet' Judic. de Billis*.
5 Mod. 144. Fitz. G. 256.

The Pleading a Release, Coverture or *Matters that*
 Infancy in an *Assumpsit* is good ; and yet *need not be*
 these things may be given in Evidence upon *pleaded, but*
Non Assumpsit ; D. may not be willing to *may be given*
 put such Matters of Law to the Judgment *in Evidence on*
 of a Jury, or perhaps may design to save *the general*
 the Costs of a special Verdict. *Cartb. 356.* *Issue.*

Every Plea to the Jurisdiction of the *When Pleas in*
 Court, or in Abatement, ought to be plea- *Abatement to*
 ded before the Rule for pleading is out, *be pleaded.*
 and cannot be pleaded after an Imparance, *1 Mod. 14.*
 unless the Declaration is delivered so late
 in the Term, that the Defendant is not
 bound to plead to it that Term, or is de-
 livered after Term ; in both which Cases,
 the Defendant may, within the first four
 Days inclusive of the next Term, plead any
 Plea in Abatement, or to the Jurisdiction
 of the Court, as of the precedent Term.
 But if such Plea be not delivered or brought
 into the Office before the Expiration of the
 said four Days, (whether a Rule to plead
 be given or not) such Plea is not to be re-
 ceived ; and *Sunday*, and any Day, on which
 the Court doth not sit, is to be accounted
 as one of the four Days, unless it happens
 to be the last.

If a Declaration be delivered against one *When by a*
 in Custody, he shall have the whole Term *Prisoner.*
 to plead in Abatement. *Salk. 515.*

Every Plea of Tender, or other Plea, *Tender to be*
 wherein the Defendant alledges he was al- *pleaded in like*
 ways ready to do any particular Act, must *manner.*
 be pleaded in like manner as Pleas in Abate-
 ment.

On Plea of Tender, Money to be brought into Court.

Where a Tender is pleaded, the Money must be brought into Court, and the Receipt of the Officer to whom paid, wrote on the Plea before it is filed.

Plea of Ancient Demesne.

A Plea of Ancient Demesne, being a Plea to the Jurisdiction of the Court, is not a Plea in Abatement within the Meaning of the Act for Amendment of the Law.

Outlawry not to be pleaded a second time.

If the Defendant doth plead an Outlawry in Disability of the Plaintiff, and it being reversed, he shall not plead another in Disability.

In Case of a dilatory Plea, the Court will order the Defendant to stand by it, or plead peremptorily on the Morrow, or instantly.

If the Defendant has pleaded a dilatory or frivolous Plea, the Court upon Motion will order, that he shall stand by his Plea, or plead some other peremptorily on the Morrow, which shall not afterwards be waived; but towards the End of the Term, (because otherwise there might not be sufficient Time to give Notice of Trial) the Court requires the Defendant, if he will not abide by his Plea, to plead another instantly. But this the Court will not do, till the Time allowed by the common Rule to plead is expired.

Same with regard to frivolous Demurrers.

Pleas in Bar.

The Rule is the same with regard to frivolous Demurrers.

As Pleas in Abatement conclude to the Bill, Declaration or Writ, and pray that the same may be quashed, Pleas in Bar conclude to the Action, and pray Judgment whether the Plaintiff ought to have or maintain his Action thereupon against the Defendant.

A Release, an Acquittance, Acceptance of another thing, Statute of Limitations

and many other Matters, are pleadable in Bar.

And the said *Nicholas* comes by *Arthur Plea of Stone* his Attorney, and defends the Force ^{Payment to a} and Injury, when, &c. and craves Oyer ^{Bond, according to the Statute.} of the said Writing obligatory, and it is read to him in these Words; that is to say, Know all Men, &c. And he likewise craves Oyer of the Condition of the said Writing obligatory, which is read to him in these Words; that is to say, The Condition of this Obligation, &c. which being read and heard, the said *Nicholas* saith, That the said *William* and *Elizabeth* ought not to have or maintain their said Action thereof against him the said *Nicholas*, because he saith, that after the making of the said Writing obligatory, and after the said first Day of *September*, mentioned in the said Condition, and before the Day of the exhibiting of the Bill of them the said *William* and *Elizabeth*, that is to say, on the 18th Day of *January* in the Year of our Lord 1735, at *London* aforesaid, that is to say, in the said Parish of *St. Mary le Bow* in the said Ward of *Cheap*, he the said *Nicholas* paid to the said *William* and *Mary* as Administratrix, as aforesaid, the said Sum of 1315*l.* 11*s.* 6*d.* contained in the said Condition, according to the Form of the Statute in such Case made and provided, together with all Interest then due thereon: And this he is ready to verify: Wherefore he prays Judgment whether the said *William* and *Elizabeth* ought to have or main-

tain their said Action thereof against him the said *Nicholas*, &c.

Replication.

And the said *William* and *Elizabeth* say, that they, for any thing above alledged by the said *Nicholas* in his said Plea, ought not to be precluded from having their said Action against him the said *Nicholas*, because they say that the said *Nicholas* hath not paid to them the said *William* and *Elizabeth* the said Sum of 1315*l.* 11*s.* 6*d.* with all Interest thereon due, in such Manner and Form as the said *Nicholas* hath above alledged in his said Plea: And this they pray may be inquired of by the Country: And the said *Nicholas* doth so likewise. Therefore, &c.

Issue.

NonAssump-
sit infra sex
Annos.

And the said *R.* by *Martin Lantrow* his Attorney, comes and defends the Force and Injury, when, &c. and saith, that the said *T.* ought not to have or maintain his said Action thereof against him, because he says, that he the said *R.* did not, at any time within six Years next before the Day of the exhibiting of the Bill of the said *T.* undertake in Manner and Form as the said *T.* above complains against him: And this he is ready to verify: Wherefore he prays Judgment, whether the said *T.* ought to have or maintain his said Action thereof against him.

Replication.

And the said *T.* says, That he, by any thing by the said *R.* above by pleading alledged, ought not to be barred from having his said Action against him, because he
says,

says, that the said R. did at some Time within six Years next before the Day of exhibiting the Bill of the said T. undertake in manner as the said T. above complains against him : And this he prays may be inquired of by the Country.

And the said *Robert Perry*, by *Robert Richardson* his Attorney, comes and defends the Force and Injury, when, &c. and says, that he did not undertake in Manner and Form as the said *Sarah Wheeler* above complains against him : And of this he puts himself upon the Country : And the said *Robert*, by Leave of this Court, according to the Form of the Statute in that Case lately made and provided, further says, that the said *Sarah Wheeler* ought not to have or maintain her said Action against him, because he says, that he the said *Robert Perry* did not at any time within six Years next before the Day of exhibiting the said Bill of the said *Sarah Wheeler*, undertake in Manner and Form as the said *Sarah Wheeler* above complains against him : And this he is ready to verify : Wherefore he prays Judgment, if the said *Sarah Wheeler* ought to have or maintain her said Action against him.

And the said *William Betts*, by *Henry Hart* his Attorney, comes and defends the Force and Injury, when, &c. and says, that the said *William Dowse* ought not to have or maintain his said Action against him, because he saith, that the several Causes of

Non Assump-
sit & Non As-
sumpsit infra
sex Annos.

Actio non
accrevit in-
fra sex An-
nos.

of Action in the said Declaration did not first accrue, nor did any of the said Causes of Action first accrue within six Years next before the Exhibiting of the said Bill of the said *William Dowse*: And this he is ready to verify; Wherefore he prays Judgment, if the said *William Dowse* ought to have or maintain his said Action against him.

The Statute of Usury pleaded. Oyer.

And the said *Margaret*, by *J. A.* her Attorney, comes and defends the Force and Injury, when, &c. and craves Oyer of the said Writing obligatory; and it is read to her in these Words, that is to say, Know all Men, &c. And she craves Oyer of the Condition of the said Writing obligatory, which is read to her in these Words, that is to say, The Condition of this Obligation is such, that if the above bounden *C. Dunster*, *D. Wright*, and *M. Jones*, or any of them, their, or any of their Heirs, Executors, or Administrators, do well and truly pay, or cause to be paid unto the above named *Elizabeth Hayes*, her Executors, Administrators or Assigns, the full Sum of 100 l. of good and lawful Money of Great Britain, with lawful Interest, on the fifth Day of *December* now next ensuing, then this Obligation to be void, or else to remain in full Force and Effect; which being read and heard, the said *Margaret* says, that she ought not to be charged with the said Debt, by Virtue of the said Writing obligatory; because she says, that after the twenty-ninth Day of *December* in the Year

of our Lord 1713. *to wit*, on the fifth Day of *July* in the Year of our Lord at the said Parish of *St. Martin* in the Fields, it was corruptly agreed between the said *Elizabeth* and the said *Margaret*, and one *C. Dunster* and *D. Wright*, that the said *Elizabeth* should advance and lend the said *Margaret C. and D.* the Sum of 100*l.* and should give Day of Payment thereof unto the fifth Day of *December* next ensuing, and that the said *Margaret, C. and D.* for the Loan of the said 100*l.* and for giving Day of Payment thereof by the Time aforesaid, should give and pay to the said *Elizabeth* the Sum of five Pounds, and five Shillings, upon the said fifth Day of *July*, for the Interest thereof, and for giving Day of Payment of the said one hundred Pounds; which said five Pounds and five Shillings exceed the Rate of five Pounds for the Interest of one hundred Pounds for one whole Year, contrary to the Form of the Statute in such Case lately made and provided; And afterwards, *to wit*, on the said fifth Day of *July* in the Year and at the Place in the Declaration above-mentioned, the said *Elizabeth*, in Prosecution of the said corrupt Agreement, advanced and lent to the said *Margaret, C. and D.* the said 100*l.* and the said Writing in the said Declaration abovementioned was by the said *Margaret, C. and D.* sealed, and as their Deed delivered to the said *Elizabeth*; and they the said *Margaret, C. and D.* then and there, *to wit*, on the said fifth Day of *July* in the Year

Year and at the Place in the said Declaration above-mentioned, paid to the said *Elizabeth* the said Sum of five Pounds and five Shillings, for Interest of the said one hundred Pounds, and for giving Day for Payment thereof unto the said fifth Day of *December* then next ensuing, in Performance, and according to the Form and Effect of the said corrupt Agreement, by which the said Writing in the said Declaration above-mentioned, by Force of the Statute in such Case made and provided, is void in Law: And this she is ready to verify: And therefore she prays Judgment, whether she ought to be charged with the said Debt, by Virtue of the said Writing, &c.

Replication,
that it was for
a true and just
Debt.

And the said *Elizabeth* says, that she, by any thing by the said *Margaret* above by Pleading alledged, ought not to be barred from having her said Action thereof against the said *Margaret*, because she says, that the said *Margaret* made, sealed, and as her Deed delivered to the said *Elizabeth* the said Writing obligatory in the said Declaration mentioned, for a true and just Debt due from the said *Margaret* to the said *Elizabeth*; without this, that it was corruptly agreed between the said *Elizabeth* and the said *Margaret*, and one *C. Dunster*, and *D. Wright*, in Manner and Form as the said *Margaret* has above by Pleading alledged: And this she is ready to verify: Wherefore she prays Judgment, and that her said Debt, together with her Damages by Oc-
casion

caſion of the detaining the ſaid Debt, may be adjudged to her.

And the ſaid *Margaret*, as before, ſays, *Rejoinder and* that it was corruptly agreed between the *Issue.* ſaid *Elizabeth* and the ſaid *Margaret* and one *C. Dunſter* and *D. Wright*, in Manner and Form as ſhe the ſaid *Margaret* has above by Pleading alledged: And of this ſhe puts herſelf upon the Country: And the ſaid *Elizabeth* likewise, &c. Therefore *Issue.* let a Jury come thereupon before our Lord the King at *Westminster* on next *Venire awarded.* after and who are in no wiſe of kin either to the ſaid *Elizabeth*, or to the ſaid *Margaret*, to take Cognizance upon their Oaths of the whole Truth of the Premiffes; becauſe as well the ſaid *Margaret* as the ſaid *Elizabeth* have put themſelves upon that Jury. The ſame Day is given to the Parties aforeſaid at the ſame Place.

Demurrers.

AND the ſaid *Edward S.* by *George Demurrer* in *Goldsmith* his Attorney, comes and *Abatement to* defends the Force and Injury, when, &c. *a Declaration in Debt.* and prays Judgment of the ſaid Declaration, becauſe he ſays, that the ſaid Declaration, and the Matter therein contained, are not ſufficient in Law to maintain the Action of the ſaid *James M.* againſt him. the ſaid *Edward S.* to which ſaid Declaration the ſaid *Edward S.* has

no need, nor is he bound by the Law of the Land in any manner to answer: And this he is ready to verify; wherefore for Default of a sufficient Declaration in this Behalf the said *Edward S.* prays Judgment of the said Declaration, and that the same may be quashed, &c.

Joinder in Demurrer.

And the said *James M.* says, that by any thing before alledged the said Declaration ought not to be quashed, because he says, that the said Declaration, and the Matter therein contained, are sufficient in Law to maintain the said Action of the said *James M.* against the said *Edward S.* Which said Declaration, and the Matter therein contained, the said *James M.* is ready to verify and prove, as the Court, &c. And because the said *Edward S.* does not answer the said Declaration, nor has hitherto in any manner denied the same, the said *James M.* prays Judgment, and his said Debt, together with his Damages by Occasion of detaining the said Debt, to be adjudged to him.

Conclusion in Debt.

In Case.

And his Damages by Occasion of the Premises to be adjudged to him.

In Trespass.

And his Damages by occasion of the said Trespass to be adjudged to him.

Trespass and Assault.

And his Damages by occasion of the said Trespass and Assault to be adjudged to him.

Covenant.

And his Damages by occasion of the said Breach of Covenant to be adjudged to him.

Demurrer to a Declaration.

And the said *Nicholas*, by *Arthur Stone* his Attorney, comes and defends the Force and Injury, when, &c. and saith, that the

said

* C

said Declaration, and the Matter therein contained, are not sufficient in Law to maintain the said Action against the said *Nicholas*, to which said Declaration the said *Nicholas* hath no need, nor is he obliged by the Law of the Land to answer : Wherefore for want of a sufficient Declaration in this Case the said *Nicholas* prays Judgment, and that the said Declaration may be quashed ; and the said *Nicholas*, according to the Statute, shews the Causes of Demur-
Causes, not al-
 leged that
 Administra-
 tion was grant-
 ed to Plaintiff.
 er following, *to wit*, that it does not appear, nor is it alledged in the said Declaration, whether the said *James Kirwan* died *intestate* or not ; * nor is it alledged in the said Declaration as it ought to be, that *Administration* of the Goods and Chattels, which were of the said *James Kirwan* at the Time of his Death, was committed to the said *Elizabeth*, and also that the said Declaration is uncertain, and wants Form.

And the said *John Sandford*, by H. G. Demurrer in
 Bar to a De-
 claration.
 Lilly's En-
 tries 103.
 his Attorney, comes and defends the Force and Injury, when, &c. and says, that the said Declaration, and the Matter therein contained, are not sufficient in Law for the said *Joseph* to have and maintain his said Action against him the said *John* ; to which said Declaration the said *John* has no need, nor is he bound by the Law of the Land in any manner to answer : And this he is ready to verify : Wherefore for want of a sufficient Declaration in this Case, the said *John* prays Judgment, and that the said

* Good after Verdict. *Skin. 551. Styles 262.*

Joseph may be barred from having his said Action against him the said *John*, &c. and for Cause of Demurrer in Law, the said *John Sandford*, according to the Form of the Statute, &c. shews to the Court here

Causes of Demurrer, two several Causes of Action that ought not to be joyned.

Blanks in the Declaration.

Day given to the Plaintiff to join in Demurrer:

Plaintiff makes Default.

Judgment.

the following Causes, *to wit*, That the said two several Causes of Action, that is to say, of Trespass, and of Trespass on the Case, in the said Declaration contained and above shewn, do not lie together, nor ought to be contained in one and the same Declaration; and that in the said Declaration there are diverse vacant Spaces wanting Words to signify and expresse Days, Months, Years, and other Things.

And upon this the said *John* prays, that the said *Joseph* may join with him in Demurrer: And thereupon a Day is given, by the Court of our said Lord the King now here, to the said *Joseph* before our Lord the King at *Westminster*, until *Thursday* next after the Octave of Saint *Martin* thence next ensuing, to join with the said *John* in the said Demurrer in Law; and the said *Joseph* at that Day being solemnly demanded came not, nor has he further prosecuted his said Bill against the said *John*, but made Default; It is therefore considered, that the said *Joseph* take nothing by his said Bill; but that he and his Pledges of Prosecuting, *to wit*, *John Doe* and *Richard Roe* be in Mercy; and that the said *John* go thereupon without Day, &c. And it is further considered by the Court of our said Lord the King now here, that the said *John*

recover

recover against the said *Joseph* four Pounds for his Costs and Charges by him about his Defence in this Behalf sustained, adjudged to the said *John* by the Court of our said Lord the King, according to the Form of the Statute in such Case lately made and provided, &c. and that the said *John* have thereof Execution, &c.

And the said *Joseph* says, that the Plea ^{Joinder in De-} by him the said *Joseph* in Manner and Form ^{murrer to a} above pleaded, and the Matter in the same ^{Plea in Bar.}

contained, is good and sufficient in the Law to bar the said *John* from having his said Action against him the said *Joseph*; which said Plea, and the Matter therein contained, the said *Joseph* is ready to verify and prove as the Court, &c. and because the said *John* has not answered the said Plea, nor hitherto any ways denied it, the said *Joseph* prays Judgment, and that the said *John* may be barred from having his said Action against him the said *Joseph*, &c. But because the ^{Continuance by} Court of our said Lord the present King ^{Cur. advisare} here, is not yet advised what Judgment to ^{vult.} give of and concerning the Premisses, a Day is given to the said Parties, that they be before our Lord the King at *Westminster*, on next after to hear their Judgment thereon, because the said Court of our said Lord the present King here is not yet advised thereof.

And the said *Robert Browning* says, that ^{Demurrer to a} by any thing by the said *Benjamin Suran* ^{Plea.} above by pleading alledged, ought not to

be barred from having his said Action against the said *Benjamin*, because he says, that the said Plea, by the said *Benjamin* in Manner and Form above pleaded, and the Matter therein contained, are not sufficient in Law to bar the said *Robert* from having his said Action against the said *Benjamin*; to which said Plea, in Manner and Form above pleaded, the said *Robert* has no need, nor is he bound by the Law of the Land in any manner to answer: And this he is ready to verify: Wherefore for Default of a sufficient Plea in this Behalf the said *Robert* prays Judgment, and his Debt, together with his Damages by occasion of detaining that Debt, to be adjudged to him, &c.

Joinder.

And the said *Benjamin* says, that the said Plea by him the said *Benjamin* in Manner and Form aforesaid above pleaded, and the Matter therein contained, are good and sufficient in the Law to bar the said *Robert* from having his Action against the said *Benjamin*: Which said Plea, and the Matter therein contained, the said *Benjamin* is ready to verify and prove as the Court &c. And because the said *Robert* does not answer the said Plea, nor has hitherto any ways denied it, the said *Benjamin* as before prays Judgment, and that the said *Robert* may be barred from having his said Action against him the said *Benjamin*, &c. But because the Court of our said Lord the King now here are not yet advised of giving their Judgment of and upon the Premises, a Day

Continuance.

is given to the said Partys before our said Lord the King at *Westminster*, until next after to hear their Judgment of and upon the Premises, for that the Court of our said Lord the King is not yet, &c.

And the said *William* says, that the said *Demurrer to a*
Plea, by the said *John* in Manner and Form *Replication.*
above by replying pleaded, and the Matter therein contained, are not sufficient in Law for the said *John* to maintain his said Action against the said *William*; and he has no need, nor is he bound by the Law of the Land, in any manner to answer to the said Plea in Manner and Form aforesaid pleaded: And this he is ready to verify: Wherefore for Default of a sufficient Replication in this Behalf, the said *William* as before prays Judgment, and that the said *John* may be barred from having his said Action against him, &c.

And the said *John* says, that the said *Joinder.*
Plea, by him the said *John*, in Manner and Form aforesaid above by replying pleaded, and the Matter therein contained, are good and sufficient in Law to maintain the said Action of the said *John* against the said *William*: Which said Plea, and the Matter therein contained, the said *John* is ready to verify and prove as the Court, &c. And because the said *William* does not answer the said Replication, nor has hitherto in any manner denied the same, the said *John* as before prays Judgment, and his said Debt, together with his Damages by Occasion of
N 2 detaining

detaining that Debt, to be adjudged to him, &c.

*Demurrer to a
Rejoinder in
Replevin.*

*Cause of De-
murrer.*

Finder.

And the said *William* says, that the said Plea of the said *Sylas* above by rejoining pleaded, and the Matter therein contained, are not sufficient in Law to bar the said *William* from his said Advowry and Cognizance, and that he has no need, nor is he bound by the Law of the Land to answer the said Plea in Manner and Form aforesaid pleaded: And this he is ready to verify: Wherefore for Default of a sufficient Plea in this Behalf, the said *William* as before prays Judgment, and a Return of the said Cattle, together with his Damages, Costs and Charges by him about his Suit in this Behalf expended, to be adjudged to him, according to the Form of the Statute in such Case lately made and provided, &c. And for Cause of Demurrer in Law to the said Plea, the said *William*, according to the Form of the Statute in such case lately made and provided, shews to the Court here the following Cause, *to wit*, that the Value of the Land rests in Estimation, and the said Custom by the said *Sylas* above by pleading pretended and alledged is uncertain, insufficient, and void in Law.

And the said *Sylas*, for that he has by his said Plea above by rejoining pleaded alledged sufficient Matter in Law to bar the said *William* from his said Advowry and Cognizance, which he is ready to verify, which said Matter the said *William* does not deny, nor in any Manner answer thereto, but in-
tirely

intirely refuses to admit the Verifying the same, as before prays Judgment, and his Damages by Occasion of the taking and unjustly detaining the said Cattle to be adjudged to him, &c.

And the said *Elibu Tale* says, that the said Plea by the said *Ezekiel* above by sur-rejoinder pleaded, and the Matter therein contained, are not sufficient in Law to intitle the said *Ezekiel* to have his Execution against the said *Elibu* for the said 40,000 *l.* and that he has no need, nor is he bound by the Law of the Land in any manner to answer to the said Plea in Manner and Form aforesaid pleaded : And this he is ready to verify : Wherefore for Default of a sufficient Plea in this Behalf the said *Elibu* as before prays Judgment, and that the said *Ezekiel* may be barred from having his Execution against him the said *Elibu*. *Demurrer to a Surrejoinder on a Scire facias.*

And the said *Ezekiel* says, that the Matter aforesaid by him by his said Surrejoinder above alledged, is sufficient in Law for him the said *Ezekiel* to have Execution for the said 40,000 *l.* in the said Writ mentioned : Which said Matter he is ready to verify, and which said Matter the said *Elibu Tale* has not denied, nor any Ways answered thereto, but intirely refuses to admit the Verifying the same. Wherefore he prays Judgment, and that he may have Execution for the said 40,000 *l.* in the said Writ mentioned. *Joinder.*

The Defendant cannot waive the General Issue or General Demurrer, and instead thereof *General Issue, or General Demurrer cannot be waived.*

thereof give a Special Plea or Demurrer, or Special Demurrer; but if a Special Plea, or Special Demurrer be given in, and the Book is made up and delivered to the Defendant's Attorney, he may strike out the Special Plea or Special Demurrer, and return it with the General Issue or General Demurrer.

If a Judgment pleaded, Term and Number-Roll to be given, if demanded.

Where any Person shall plead a Judgment or Matter of Record in the same Court, the Party so pleading the same shall upon Demand give the Attorney for the Plaintiff a Note in Writing of the Term, and Number-Roll whereon such Judgment or Matter of Record is entered and filed; and in Default thereof such Plea is not to be received.

To plead several Matters no need of an Affidavit.

An Affidavit is not necessary in order to plead two or more Matters, but the Court expects to be informed what the Matters be that are desired to be pleaded, in order to judge whether they are proper.

When bound to plead an Issuable Plea, may demur to the Replication.

If the Defendant be bound by Rule of Court, or Order of a Judge, to plead an Issuable Plea, and take Notice of Trial, and accordingly he pleads an Issuable Plea, and the Plaintiff replies, he may notwithstanding demur to the Replication without Breach of the Rule or Order.

What Time the Party has on Rules given by the Secondary.

On all Special Rules given by the Secondary, as to Reply, Rejoin, Surrejoin, Rebut, plead in Bar, join in Demurrer, or to enter the Issue or Demurrer, on the Part of the Defendant, the Party who is to do the Act is to be served with a Copy of the Rule,

Rule, and hath four Days Time, exclusive after the Service of a Copy of such Rule, to Reply, Rejoin, &c. And if Judgment be signed, or other Proceedings had within that Time, the same will be set aside, and Sunday, or any Holiday on which the Court doth not sit, not being the last of those four Days, is to be reckoned a Day within those Rules.

If a Cause has continued four Terms without Prosecution before Issue joined, each Party shall have a whole Term's Notice to Reply, Rejoin, &c. unless the Cause has been stayed by Injunction or Privilege.

Term's Notice to reply, &c. if no Proceedings for four Terms.

If the Defendant in his Plea makes a *Profert in Curiam* of any Deed or Writing, the Plaintiff may pray Oyer of such Deed or Writing, and shall have a Copy thereof delivered to him, paying for it 4 d. per Sheet, besides the Duty; and shall have as much Time to reply after he receives it as he had at the Time of demanding such Oyer.

What Time Plaintiff has to reply after Oyer of Deed mentioned in Plea.

Special Pleadings that ought to be put in the Office of the Clerk of the Papers, or Copies of them ought not to be delivered by one Attorney to another, but must be left with the proper Clerk of the Papers, who is to make Copies thereof, signed by him, *vide antea* fo. 12, 13. If the Plaintiff's Name begins with *A.* to be left with Mr. Benton, if with *B.* to be left with Mr. New, and so alternately.

Special Pleadings to be left with the Clerks of the Papers;

who is to make and sign Copies.

Mr. Benton.

Mr. New.

A.
C.
E.
G.
I.
L.
N.
P.
R.
T.
W.B.
D.
F.
H.
K.
M.
O.
Q.
S.
V.

X. Y. Z.

When the Clerk of the Paper makes up the Paper Book he charges 8 *d.* per Sheet for the whole Book, and 4 *d.* a Sheet for all Pleadings subsequent to the Declaration, besides the King's Duty.

What Copys of Pleadings he makes for the Plaintiff will, on being brought back, be made Part of the Paper Book, and allowed for.

A common Joinder in Demurrer need not be signed by Counsel, but is generally drawn of Course by the Clerk of the Paper.

*Special Plea
and Demurrer
to be signed by
Counsel.*

Every such Plea or Demurrer is to be signed by Counsel, and ought not to be received by the Clerk of the Papers, unless so signed; and every Copy of such Plea or Demurrer is to be subscribed with the Name of the Counsel who signed the same. *Easter*
18 Car. 2.

Every

Every Clerk or Attorney of this Court may, according to the ancient Rules of this Court, make up Issues and Demurrers in the several Cases following, viz.

In what Cases Attorneys may make up Issues or Demurrers Books.

Every Issue that may be given on the Book-side.

Not guilty to a new Assignment.

The Bar of *Son Frank Tenement*.

Comperuit ad Diem to a Sheriff's Bond.

Nul tiel Record to a *Scire facias*, or Action of Debt on a Judgment.

A general Demurrer to a Declaration.

In an Action of Covenant, where the Defendant in his Bar concludeth, *Et de hoc ponit se super Patriam*.

Every Special *Non est factum*.

Every *Son Assault Demesne*.

All Issues and Demurrers upon every Writ of Error, *Scire facias* and *Audita querela*.

All Repleaders, or other Things formerly entered upon Record.

But in no other Cases whatsoever.

In all special Pleadings, where the Plaintiff takes Issue upon the Defendant's pleading, or traverses the same, or demurs, so as the Defendant is not let in to alledge any new Matter, there the Plaintiff may make up the Paper-Book, without giving a Rule with the Secondary to rejoin.

In what Cases the Plaintiff may make up the Book without giving Rule to rejoin.

If a Paper-Book be made up, and delivered in Term-time, or within 4 Days exclusive after Term, with a Rule thereon, given by the Clerk of the Papers, for bringing of the same Book to be inrolled, and 4 Days.

Book made up in Term, or within 4 Days after, to be returned in 4 Days.

the

the Defendant's Attorney doth not, within 4 Days after the Delivery thereof, bring back the Book, and join with the Plaintiff in the Special Issue or Demurrer made up, or waive his Special Plea, and give the General Issue or Demurrer, to any Special Issue tendered, and pay for entering the Pleadings on his Part, Judgment may be signed and entered, as if no Plea had been pleaded.

If Plea comes in late, and the Book be made up within 8 Days after Term, to be also returned within 4 Days.

But where a Plea is not put in in Time, so that a Paper-Book may be made and delivered in Term, or within 4 Days after; yet if it be made up and delivered within 8 Days after the Term, the Defendant's Attorney shall be obliged to take it, and return it again within 4 Days after the Delivery, or else the Plaintiff's Attorney may sign Judgment.

If Book not delivered within 8 Days after Term, if in London or Middlesex, or a Demurrer, not to be returned till 4 Days in next Term.

If to be tried at the Assizes, to be returned in 4 Days.

If a Plea is pleaded in Term, or in Time after the Term, and the Paper-Book is not made up and delivered within 8 Days exclusive after Term, if it be an Issue to be tried in *London or Middlesex*, or a Demurrer, the other Party is not bound to deliver back the Book, but hath so to do at any Time within the first 4 Days of the next Term; but if it be an Issue to be tried at the Assizes, the Defendant's Attorney shall deliver back the Book within 4 Days after the Delivery thereof, and pay for entering his Part, and join in the Special Issue, or give the General Issue, and take Notice of Trial, or else the Plaintiff's Attorney may sign Judgment by Default, as if the Defendant had not pleaded at all.

But

But in all Cases, if the Plaintiff's Attorney accept the Book after the limited Time, he cannot sign Judgment.

If Plaintiff's Attorney accept the Book after the 4 Days, he cannot sign Judgment.

If the Paper-Book be of an Issue in Fact, the 4 Days for keeping the Paper-Book are to be reckoned exclusive of the Day of the Delivery: If of a Demurrer, an Issue in Law, the 4 Days are inclusive.

Where the 4 Days are exclusive, where inclusive.

Upon Delivery of any Paper-Book where an Issue is joined, and Notice of Trial given on the Back of the Book, if the same be afterwards waived, and the General Issue given, the Notice which was given for the Trial of the Special Issue, shall serve for Notice of the General Issue.

Notice of Trial on Special Issue, to serve for General Issue.

Where the Plaintiff upon any Pleading of the Defendant tenders an Issue, and the Book is made up and delivered with Notice of Trial, and the Defendant strikes out the *Similiter*, and returns the Book with a Demurrer, if Judgment on the Demurrer be given for the Plaintiff, the same Notice which was given for the Trial of the Issue, shall serve for executing the Writ of Inquiry. *Hil. 8 Geo. 1.* But then the Plaintiff ought to give Notice of the Hour and Place of executing the Inquiry.

Notice of Trial to serve for Enquiry when Book returned with a Demurrer.

In all Paper-Books to be made up by the Clerk of the Paper, he ought to subscribe the Name of the Counsel who signed the Pleadings, as well on the Part of the Plaintiff as of the Defendant; and in all Books to be delivered to the Judges, the Names of

In all Paper Books the Names of the Counsel to be inserted.

of the Counsel who signed the Pleadings ought also to be subscribed. *Easter 18 Car. 2.*

Books to be delivered to the Judges 2 Days before the Argument.

The Books ought to be delivered to the Judges 4 Days, [but for a long Time the Practice has been to deliver them only two Days] before the Day appointed for the Argument. *Easter 2 Ja. 2.*

Party who does not deliver Books, not to be heard.

If one of the Parties delivers all the Paper-Book, on the other Party's neglecting to deliver any, the Party neglecting will not be heard when the Cause comes on to be argued.

How the Books are to be delivered.

The Books for the Chief Justice and Senior Puisne Judge, ought to be delivered by the Plaintiff, and those for the two other Judges by the Defendant.

Causes standing over, are to be entered with the Clerk of the Papers, 7 Days after Term.

Every Cause, which stands over for the Resolution of the Court, or to be spoke to further in another Term, ought to be entered with the Clerk of the Papers within 7 Days after the Term, that a Paper of them may be prepared in Time for the Judges, and in Neglect of so doing, not to be entered without Leave of the Court. *Easter 1658.*

If Plaintiff demurs, and Defendant joins, and Plaintiff does not make up the Paper Book, the Defendant may on a Rule given.

This Rule has been disused of late Years. If the Plaintiff demurs, or takes Issue on the Defendant's Plea, Rejoinder or Rebutter, and the Defendant in case of a Demurrer joins therein, and Plaintiff will not make up the Book, and enter it on Record, the Defendant may make up the Book, and enter it if he pleases, on a Rule given by the Secondary for that Purpose. See Rule *Easter 11 W. 3.*

When

in the Court of King's Bench. 189

When the Book is made up by the De-^{The Method of} fendant, he must deliver it to the Plaintiff, ^{proceeding} and pay him for the Entry of his the De-^{when made up} fendant's Pleadings, because the Plaintiff ^{by Defendant.} may perhaps enter the Issue as he has a Right to do at any Time before the Expiration of the Rule, to enter it on the Part of the Defendant, which Rule ought to be served on the Plaintiff, at the same Time the Book is delivered to him. If the Plaintiff does not enter the Issue, the Defendant may at the Expiration of the Rule, and give Notice of Trial by Proviso; but then the Plaintiff ought to return to the Defendant the Money he received from him for the Entry on his Part.

Tuesdays and *Fridays* in every Term are called Special Paper Days, because the Court goes into the Paper before they enter upon Motions.

Of

Of making up Issues.

To make up an Issue of Michaelmas Term from a Declaration of Trinity Term, or some other precedent Term.

Of Michaelmas Term in the Twelfth Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c.

Memorandum of a Declaration of another Term. *Middlesex,* **B**E it remembred, that in the Term of the Holy Trinity last past, before our Lord the King at Westminster came A. B. by R. A. his Attorney, and brought in the said Court of our said Lord the King then there, his certain Bill against C. D. being in the Custody of the Marshal of the Marshalsea of our said Lord the King before the King himself, of * a Plea of Trespas upon the Case, [Trespas, and Assault, or Debt, as the Action is;] And there are Pledges of prosecuting, to wit, John Doe and Richard Roe, which said Bill followeth in these Words, to wit, *Middlesex,* to wit, A. B. complains of C. D. being in the Custody, &c. [so set forth the

* The Memorandum was *de placit. Debiti*. The Declaration was of a Plea of Annuity. Amended being the Mistake of the Clerk. *Carth.* 354.

Declaration *in hæc verba* to] And thereupon he brings Suit, &c.

Then on a new Line the Impar lance.

And now at this Day, that is to say, *Impar lance.*

on Monday next after three Weeks from the Day of St. Michael, [the first Day of the Term the Issue is of] in this same Term, to which Day the aforesaid C. D. had Leave to imparle to the said Bill, and then to answer thereunto before our Lord the King at Westminster, come as well the said A. B. by his Attorney aforesaid, as the said C. D. by A. S. his Attorney and the said C. D. defends the Force and Injury, when, &c. and says, that, [here insert the Plea to] And of this he puts himself upon the Country: And the said A. B. doth the like. Therefore let a Jury come thereupon before our Lord the King at Westminster on next after [some Day in the Term wherein the Issue is joined, and before the Day of Trial] who are in no ways of Kin either to the said A. B. or to the aforesaid C. D. to recognize upon their Oath the whole Truth of the Premises; because as well the said C. D. as the said A. B. have put themselves upon that Jury. The same Day is given to the Parties aforesaid, at the same Place.

*The Return of
the Venire.*

If the Declaration and Issue are of the same Term, you must enter it thus.

Middlesex. BE it remembred, that on *Memorandum*
Monday next after three of the same
Weeks from the Day of St. Michael, [the *Term.*
first

first Day of the Term] in this said Term, before our Lord the King at *Westminster*, *A. B.* comes by *R. A.* his Attorney, and brings into the Court of our said Lord the King now here, his certain Bill against *C. D.* being in the Custody, [*as in the other.*]

There is no Imparance in this Case, but after your Declaration you enter the Plea with a new Line thus :

And the said *C. D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when, &c. and says, &c. as before.

*Memorandum
of above four
Terms.*

If the Declaration be of above four Terms standing, you say, Be it remembered, that heretofore, to wit, of the Term of *St. Hilary* in the tenth Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain* &c. came *A. B.* by *R. A.* his Attorney &c.

*Eight Days
Notice of Trial
and Inquiry
sufficient.
Except.*

Eight Days exclusive is sufficient Notice of Trial, and of executing a Writ of Inquiry in all Cases whatsoever ; excepting Causes in *London* and *Middlesex*, where the Defendant lives forty computed Miles and upwards from *London*, when fourteen Days Notice must be given ; and excepting Causes wherein no Proceedings have been had for four Terms after Issue joined in which Case a Term's Notice must be given, and so likewise when by Provision unless the Cause has been stayed by Intervention or Privilege.

Sund

Sunday is to be accounted a Day in these *Sunday one of*
Notices, so it be not the Day on which *the Days.*
the Notice was given.

Every Notice of Trial, or of executing *Notices to be*
a Writ of Inquiry, and all Countermands *in Writing.*
ought to be in Writing.

Notice of Trial is generally given to
the Defendant's Attorney on the Back of
the Issue in this Manner.

Mr. B.

Take Notice of Trial in this Cause for the Notice of Trial.
last Sitting in this present Michaelmas
Term at Guild-Hall, London.

Your humble Servant,

10th Nov. 1742.

R. R.

Attorney for the Defendant.

No Indictment, Information, or Cause *Ten Days No-*
whatsoever, shall be tried at *Nisi Prius* *tice of Trial*
before any Judge or Justice of Assize, or *Nisi* *where Defen-*
Prius, or at the Sittings in *London or West-* *dant lives a-*
minster, where the Defendant or Defendants *bove 40 Miles*
reside above forty Miles from the said Citys
respectively, unless Notice of Trial in Wri-
ting has been given at least ten Days before
such intended Trial. *Stat. 14 Geo. 2.*

In Case any Party or Partys shall have *Six Days Coun-*
given such Notice of Trial as aforesaid, and *termant of*
shall not afterwards duly countermand the *such Notice.*
same in Writing at least six Days before
such intended Trial, every such Party
shall be obliged to pay unto the Party
or Partys, to whom such Notice of
Trial shall have been given as aforesaid,
the like Costs and Charges as if such
Vol. I. ○ Notice

Notice of Trial had not been countermanded. *Same Stat.*

Issue to be entered before Record of Nisi Prius engross'd.

No Record of *Nisi Prius* shall be sealed or passed at the *Nisi Prius* Office by the *Custos Brevium* of this Court, or any Clerk of the Office, before the Issue or Part of it, be fairly entered on Record, and such Entry and the Record of *Nisi Prius* be first signed by the Secondary of the Court. *Trin. 1 Ja. 2. Mich. 5 Annæ.*

As to the Manner of entering Issues on Record, see after *Folio*.

Manner of ingrossing the Record of Nisi Prius.

The *Nisi Prius* Record is to be ingross'd on a Preis of Parchment, stamped with a double Half-Crown Stamp.

For your Direction herein, I shall here give you the following Precedent prepared at the *Nisi Prius* Office.

Pleas before our Lord the King at Westminster of the Term of in the Tear of the Reign of our Sovereign Lord George the Second, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, and in the Year of our Lord 174 Roll

Memorandum of a former Term.

Middlesex, **B**E it remembered, that in to wit. Term last pass

before our Lord the King at *Westminster* came *A. B.* by *S. R.* his Attorney, and brought in the said Court of our Lord

the King then there, his certain Bill against *C. D.* being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a Plea of Trespass upon the Case; and there are Pledges of Prosecuting, namely, *John Doe* and *Richard Roe*; which said Bill followeth in these Words, *to wit, Middlesex, to wit, (prout Declaration.)*

Middlesex, **B**E it remembered, that on *Memorandum to wit, Friday* next after the *Mor- of the same.* row of the Day of the Holy *Trinity* in this same Term, before our Lord the King at *Westminster*, *A. B.* comes, by *S. R.* his Attorney, and brings in the Court of our said Lord the King now here his certain Bill against *C. D.* being in the Custody of the Marshal of the *Marshalsea* of our Lord the King, before the King himself, of a Plea of Trespass upon the Case; and there are Pledges of Prosecuting, namely, *John Doe*, and *Richard Roe*; which said Bill followeth in these Words, *to wit, Middlesex, to wit, (prout the Declaration.)*

And now at this Day, that is to say, on *Imparlane.* *Tuesday* next after three Weeks from the Day of Saint *Michael* in this same Term, to which Day the aforesaid *C. D.* had Leave to imparle to the Bill aforesaid, and then to answer thereunto, before our Lord the King at *Westminster* come as well the said *H. B.* by his Attorney aforesaid, as the said *C. D.* by *M. W.* his Attorney; and the said *C. D.* defends the Wrong

and Injury laid to his Charge by the said *A. B.* in his Declaration aforesaid, which he will be ready to maintain when, where, and in such Manner as the Court shall think fit, and saith, that he made no such Promises to the said *A. B.* as the aforesaid *A. B.* hath in his Declaration aforesaid alleged against him : And of this he puts himself upon his Country : And the said *A. B.* doth the like : Therefore let a Jury come thereupon before our Lord the King

** If in the County the last Day of the Term Issue is joined.* at *Westminster* * on (any Day before the Trial) who are in no ways of Kin either to the said *A. B.* or the said *C. D.* to recognize upon their Oath the whole Truth of the Premises ; because as well the said *A. B.* as the said *C. D.* have put themselves upon that Jury. The same Day is given to the Parties aforesaid at the same Place.

Jurat.

Middlesex, **T**HE Jury between *A. B.* to wit, Plaintiff, by his Attorney, and *C. D.* Defendant, of a Plea of Trespass upon the Case, is respited before our Lord the King at *Westminster* to * (the Day after the Trial) unless the King's right trusty and well beloved Sir *William Lee*, Knight, his Majesty's Chief Justice assigned to hold Pleas before the King himself, shall first come on (the Day of Trial) at *Westminster Hall* in the said County of *Middlesex*, according to the Form of the Statute in such Case made and provided, for Default of the Jurors, because none of them did appear ; therefore let the Sheriff have the

** If in the County, make the first Day in the next Term the Day in Bank.*

Bod.e

Bodies of the said Jurors to make the said Jury between the Parties aforesaid of the Plea aforesaid accordingly: The same Day is given to the Parties aforesaid at the same Place.

If the Plaintiff and Defendant have any Addition, add it to the *Jurat*.

If in *London*, say, At the *Guildhall* of the City of *London* aforesaid.

If for the *Affizes*, say, Unless his Majesty's Justices assigned to take the *Affizes* for the County aforesaid shall first come on (the Day of Trial) at (the Place where the *Affizes* are held) in the said County. And at the End of the *Jurat*. add,

And be it known, that the King's Writ *Le Scien-* in this Case upon Record was delivered to dum. the Under-Sheriff of the County aforesaid on (the last Day of the Term) in this same Term before our Lord the King at *Westminster* to be executed according to Law at his Peril.

The Record being ready to be sealed, *Of sealing the* you carry it to the *Nisi Prius* Office to be *Record.* sealed, where you pay 7 s. 6 d. for the first eight Sheets, and 7 s. for every eight Sheets after, and 6 d. to the Sealer.

By a Rule of Court made in *Trinity* *Record for Af-* Term 31 Car. 2. No Record of *Nisi* *fixes not to be* *sealed after* *the End of the* *Term.* *Practice al-* *tered.* *Prius* for Trial of any Issue at the *Affizes*, shall be sealed after the End of 3 Weeks after any issuable Term; but the Practice is at present altered; for by a Judge's Order, for which you pay 2s. to the Officer,

you may have your Record sealed at any Time before the Assizes *.

The Form of the Venire.

Venire.

GEORGE the Second, by the Grace of God of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex* Greeting: We

* In the Pleading and Joining of the Issue the Defendant's Christian Name was mistaken; but the Court would amend that, it being rightly named before in the Record. 1 *Ventris* 25.

Assumpsit, Plea in Abatement, Demurrer, *Respondeas Ouster*, *Non Assumpsit* and Verdict *pro Q.* — but Judgment arrested because there was no Entry in the *Nisi Prius* Record of the Plea in Abatement, &c. but only of the *Non Assumpsit*, not warranted by the Plea-Roll, which was right, but could not be taken to be in the same Cause. *Carth.* 447, 499.

Issue entered on a Roll *Easter* Term, with a Memorandum of a Bill of *Hilary* Term, Trial and Verdict *pro Q.* Rule for a new Trial on Payment of Costs and bringing the Damages found into Court; the Plaintiff made up a new Plea-Roll of *Michaelmas* Term, with a Memorandum of a Bill of *Trinity* Term, Trial and Verdict *pro Q.* set aside for Irregularity. This don't appear to be the same Cause, and the Plaintiff hath not pursued the Rule which was to try the same Issue. *Carth.* 498.

Motion to amend the *Distingas* and *Furata* in the *Nisi Prius* Record by the Plea-Roll, the Day of *Nisi Prius* was after the Day in Bank. The Verdict which was for the Plaintiff was set aside; for this is not amendable; and if so the Judge, had no Authority to try the Cause. *Carth.* 506.

command

command you, that you cause to come before us at *Westminster*, on

next after [some Day before the Trial] twelve free and lawful Men of the Body of your Country, each of whom has ten Pounds by the Year of Lands, Tenements or Rents, at the least, by whom the Truth of the Matter may be the better known, and who are in no wise of Kin either to *A. B.* the Plaintiff, or to *C. D.* to make a certain Jury of the Country between the Parties aforesaid, of a Plea of Trespass on the Case, [as the Action is] because as well the said *C. D.* as the said *A. B.* between whom the Matter in Variance is, have put themselves upon that Jury; and have there then the Names of the Jurors and this Writ. Witness Sir *William Lee*, Knight, at *Westminster*, the 23d Day of *October* in the twelfth Year of our Reign. *Anthony and Bigge.*

This Writ is not Signed but only Sealed, for which you pay 7 d.

George the Second, &c. To the Sheriff *Venire in E-*
of *Lancashire* Greeting: We command *jestment by*
you, that you cause to come before us *Original.*
wheresoever we shall then be in *England*,
on the Octave of the Purification of the
blessed Virgin *Mary* twelve free and law-
ful Men of your County, each of whom
hath ten Pounds of Lands, Tenements
or Rents by the Year at the least, by
whom the Truth of the Matter may be

the better known, and who neither to *Thomas Neale* the Plaintiff, nor to *John Wilding, Thomas Harrison, &c.* Defendants, are any ways related, to make a certain Jury of the Country between the Partys aforesaid, of a Plea of Trespass and Ejectment; because as well the aforesaid *Thomas Neale*, as the aforesaid *John Wilding, Thomas Harrison, &c.* between whom the Matter is in Dispute, have put themselves upon that Jury: And have you then there the Names of the Jurors and this Writ. Witness Sir *William Lee*, Knt. at *Westminster*, the twenty-third Day of *January* in the fourteenth Year of our Reign.

Anthony and Bigge.

One of the Sheriffs a Defendant, *Venire* awarded to the other.

Of Trials by Proviso.

Information against one of the Sheriffs of the City of *Chester*; Suggestion that the Defendant is one of the Sheriffs, and *Venire* awarded to the other, and adjudged to be well awarded. *Carth. 214.*

If the Plaintiff shall not proceed to Trial within the Time he ought by the Course of the Court, the Defendant having given a Rule for the Plaintiff to enter his Issue (if not already entered), and the Issue being entered, may have a *Venire* by Proviso, and proceed to Trial. In the *Venire* by Proviso, after the Words, "have put themselves upon that Jury," add, "Provided always, that if two Writs shall thereupon come to you, you shall

execute and return only one of them ;
and have, &c.

But in *Lilly's Entries*, Fol. 676. it is said,
these Words are not to be put in the *Ve-*
nue, but in the *Distringas* after *Plur. De-*
fact.

If the Plaintiff enter not his Issue within ^{Plaintiff on} the Time allowed by the Rule, he shall be ^{Rule must en-} Nonsuited, and the Defendant have his ^{ter his Issue,} Costs. ^{or be Nonsuit-}
^{ed.}

If the Action be laid in *London* or *Mid-* ^{No Rule to} *dlesex*, the Defendant ought not to give ^{enter Issue} a Rule for the Plaintiff to enter his Issue ^{the same} the same Term in which the Issue is joined, ^{Term, unless} unless Notice of Trial hath been given ; ^{Notice of Trial} ^{given.} and in a Country Cause the Plaintiff is no ways bound to enter his Issue the same Term.

The Plaintiff must enter his Issue, if the ^{What Time} Action is in *London* or *Middlesex*, and ^{the Plaintiff} bring the Record in the Office, within 4 ^{has to enter} Days after Notice of the Rule ; if in the ^{his Issue.} Country, before the Continuance-Day of that Term, or a *Non-Pros* may be signed and entered.

No Trial can be had by Proviso in *Lon-* ^{When a Trial} *don* or *Middlesex*, till Default made by the ^{by Proviso} Plaintiff after the Issue is entered on Re- ^{may be had.} cord, nor in Country Causes till the Plain-
tiff hath made Default in trying his Cause
the next Assizes after the Issue is entered on
Record ; and in neither Case till a Rule
for a Trial by Proviso is entered.

Notice

Notice of such Trial to be given.

Notice of Trial must be given by the Defendant to the Plaintiff in all Causes by Proviso. *Easter 1651.*

Costs for not going to Trial by Proviso.

If the Defendant does not proceed to Trial by Proviso, according to his Notice, or Countermand in Time, the Plaintiff shall have his Costs to be taxed.

Both Plaintiff and Defendant may carry down the Record.

Both Plaintiff and Defendant may carry down the Record at the same Time, but the Trial shall be on the Plaintiff's Record, if he enters it with the Marshal; but if he refuses or omits to enter it, the Defendant may proceed on his Record.

If Plaintiff neglects to proceed to Trial, Court on Motion to give Judgment in Case of Nonsuit.

But now the Practice of Trials by Proviso seems to be quite gone, for where Issue shall be joined in any Action or Suit at Law, and the Plaintiff or Plaintiffs have or hath neglected, or shall neglect to bring such Issue on to be tried according to the Course and Practice of the Court, the Judges, at any Time after such Neglect, upon Motion made in open Court, (due Notice having been given thereof) may give the like Judgment for the Defendant or Defendants in such Action or Suit, as in Cases of Nonsuit; unless the said Judges shall, upon just Cause and reasonable Terms, allow any further Time or Times for the Trial of such Issue; and if the Plaintiff or Plaintiffs shall neglect to try such Issue within the Time or Times so allowed, then and in every such Case the Judges shall proceed to give such Judgment as aforesaid. *Stat. 14 Geo. 2.*

Unless on just Cause shall allow further Time.

On second Neglect Judgment as before.

Such Judgment to be of like Effect as Judgment on Nonsuit.

All Judgments given by Virtue of this Act, shall be of the like Force and Effect as

as Judgments upon Nonsuit, and of no other Force or Effect. *Same Stat.*

Provided, that the Defendant or Defendants shall upon such Judgment be awarded ^{Defendant to have his Costs, where upon Nonsuit would be intitled to} his, her or their Costs in any Action or Suit, where he, she, or they would upon Nonsuit be intitled to the same, and in no other Action or Suit whatsoever. *Same Stat.*

When the *Venire* is returned, you make out a *Disfringas Juratores*.

George the Second, by the Grace of God Distringas, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting: We command you, that you distrain the several Persons named in the Panel annexed to this Writ, annex a Panel with the same Names; Gen. 2. is returned in the Panel to the *Venire facias* with their Additions and Places of Abode] the Jury summoned in our Court before Us, between *A. B.* Plaintiff, and *C. D.* by all their Lands and Chatels in your Bailiwick, so that neither they, nor any one by them, lay their Hands on them until you shall have further Command therein from Us, and that you answer to Us of the Issues thereof, so that you may have their Bodies before Us at *Westminster*, on next after [the first Return Day after the Day of Trial] or before our Right Trusty and Well-beloved Sir *William Lee*, Knight, our Chief Justice, assigned to hold Pleas in our Court before Us, if he shall first come, on

[the Day of the Trial] at *Westminster Hall* in the County of *Middlesex* aforesaid, according to the Form of the Statute in such Case made and provided; to make a certain Jury between the said Parties, of a Plea of [as the Action is] and to hear their Judgment of many Defaults; and have there then the Names of that Jury and this Writ. Witness Sir *William Lee*, Knight at *Westminster*, the _____ Day of [the Return of the *Venire*] in the Year of our Reign. *Anthony and Biggs*

London.

If in *London* it must be thus: At the *Guildhall* of the City of *London* aforesaid.

Affizes.

If at the *Affizes* thus: Or before our Justices assigned to take the *Affizes* in your County, if they shall first come on [the Day of the *Affizes*] at [the Place where the *Affizes* are held] in your County, according to, &c.

This Writ is only sealed, for which you pay 7 *d.* and to the Sheriff if in *Middlesex*, for the Return 12 *s.*

Distringas

Jur. in Eject.

in B. R. by

Original for a

Trial at Bar.

George the Second, &c. To the Sheriff of *Lancashire*, Greeting: We command you, that you distrain Sir *Darcy Lever* of *Aterington*, Knight, *Miles Sandys* of *Hawkeshead*, Esq; &c. being the Jurors summoned in our Court before us at *Westminster*, between *Thomas Neale* Plaintiff and *John Wilding*, *Thomas Harrison*, &c. Defendants, by all their Lands and Chattels

els in your Bailiwick ; so that neither
they, nor any one by them, intermed-
dle therewith until you shall have an-
other Precept from Us, and that you an-
swer to us out of the Issues of the same,
so that you have their Bodys before Us
on Saturday next after three Weeks from
the Day of *Easter* wheresoever we shall
then be in *England*, to make a certain
Jury of the County between the Partys
foresaid of a Plea of Trespas and Eject-
ment, and to hear their Judgment there-
upon of many Defaults : And have you
then there the Names of that Jury and
this Writ. Witness Sir *William Lee*, Knt.
at *Westminster*, the twelfth Day of *Februa-*
ry in the fourteenth Year of our Reign.

Anthony and Bigge.

Where it shall appear to the Court that *Of granting a*
it will be necessary that the Jurors should *View.*
have the View of the Mesuages, Lands,
or Place in Question, in order to their bet-
ter understanding the Evidence, the Court
may order a Special Writ of *Distringas* to
issue, by which the Sheriff shall be com-
manded to have six out of the first twelve
of the Jurors named in such Writ, or some
greater Number of them, at the Place
in Question, some convenient Time before
the Trial ; who then and there shall have
the Matters in Question shewn to them by
two Persons in the Writ named to be ap-
pointed by the Court : And the Sheriff
shall

shall by Special Return certify, that a View hath been had according to the Command of the Writ. *Stat. 4, 5 Anna, c. 16, §*

Where a View shall be allowed, six of the Jurors or more, (who shall be consented to on both Sides, or if they cannot agree, shall be named by the proper Officer of the Court, or if need be, by the Judge, where the Cause is depending, or by the Judge, before whom the Cause shall be brought on to Trial) shall have the View and shall be the first sworn, or such of them as appear on the Jury before any Drawing [by Ballot] and so many only shall be drawn to be added to the Viewers as shall make up the Number of Twelve. *Stat. 3 Geo. c. 25. § 14.*

Wednesday next after three Weeks of the Holy Trinity in the 14th Year of King George the Second.

Cape Smyth,
Esq;

*Rule for a
View.*

IT is ordered, that there issue a Writ of *Disfringas Juratores* to be directed to the Sheriff of the County of *Essex*, and containing a Clause commanding the said Sheriff to cause six or more of the Jurors impanelled and returned to try the Issue between the Parties, whom the said Parties shall mutually choose, to take a View of the Place in Question before the Day of the Trial of the said Issue, *to wit, on Wednesday the ninth Day of July next* and by Consent of both Parties, It is further ordered, that *Richard Gallop*, Yeoman, on the Part of the Plaintiff, and

Stimpson

Simpson Bullmore, Yeoman, on the Part of the Defendant, shall attend the same Day, and show the said Place to such of the Jury as shall be so chose to view the same; and that the Expences of the said View shall be equally born by both Parties, and no Evidence on either Side shall be given at the Time of taking the said View.

Upon the Motion
of Mr. *Marsh*.

By the Court.

George the Second, by the Grace of God
of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Suffex*, Greeting: We command you, that you distrain the several Persons named in the Panel annexed to this Writ, the Jury summoned in our Court before us between *A. B.* Plaintiff, and *C. D.* Defendant, by all their Lands and Chattels in your Bailiwick; so that neither they, nor any one by them, intermeddle therein until you shall have another Precept hereon from us; and that you answer to us of the Issues of the same; so that you may have their Bodys before Us at *Westminster* on *Wednesday* after three Weeks of *Michael*, or before our Justices assigned to take the Assizes in your County, if they shall first come, on *Monday* the second of *September*, at *Horsham* in your County, according to the Form of the Statute in such Case lately made and provided, to make a certain Jury of the Country

Distringas
Jur. for a
View.

Country between the Partys aforesaid, of a Plea of Trespafs; and to hear their Judgment thereupon of many Defaults. And in the mean Time, according to the Form of the Statute in such Case lately made and provided, we command you that you have six of the first twelve of the said Jurors, or any greater Number of them, at the Place in Question upon the twentieth Day of *August* next ensuing, who then shall have View of the said Place in the Presence of *J. M.* on the Behalf of the Plaintiff, and *W. F.* on the Behalf of the Defendant, appointed by our Court before Us, to shew the said Place to the said Jurors; and that in what Manner you shall execute this our Precept you make return to Us at *Westminster*, and to our Justices at the said Assizes, remitting to Us this our Writ. Witness, &c.

And other.

And in the mean Time, according to the Form of the Statute in this Case lately made and provided, We further command you, that you cause six of the first twelve of the said Jurors impanelled and returned to try the Issue joined between the said Partys, or as many more of them as you shall think fit, to take View of the Place in Question on the Day of, &c. and that the said Jurors meet on the same Day at the House of *A. F.* (as in the Rule for the View) in your County, and proceed from thence to view the said Place, in the Presence of *G. A.* on the Part of the Plaintiff, and *J. A.*

on the Part of the Defendant, appointed by our Court before Us to shew the said Place to such of the said Jurors as shall come to view the same : And that you make appear to Us at *Westminster* on the said next after in what Manner you shall have executed this our Precept, and that you have then there this Writ. Witnesses, &c.

We command you, that in the mean Time, according to the Form of the Statute in such Case lately made and provided, you have six or more of the said Jurors, whom the said *John Gape* and *James Smith* shall mutually choose, at the Place in Question, on the ninth Day of July next ensuing ; who shall then have View of the same in the Presence of *Richard Gallop*, Yeoman, on the Part of the Plaintiff, and *Simpson Bullmore*, Yeoman, on the Part of the Defendant, appointed by our Court before Us to shew the said Place to the said Jurors ; and that you return to Us at *Westminster* on the Day aforesaid, and to our Justices at the Assizes aforesaid, in what Manner you shall execute this our Writ, sending to Us this Writ and the Names of the said Jurors. Witnesses, &c.

Another.

If there be Occasion, you make out a Subpœna for Witnesses.

George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To

Subpœna for Witnesses.

A. B. C. D. E. F. G. H. [You may put in 4 Witnesses] Greeting: We command you that all and singular Businessses and Excuses being laid aside, you and every one of you be in your proper Persons before our Right Trusty and Well-beloved Sir *William Lee*, Knight, our Chief Justice assigned

* If at the Assizes, say, before our Justices assigned to take the Assizes in the County of — to hold Pleas in our Court before Us * at *Westminster Hall* in the County of *Middlesex*, on the — Day of — next [the Day of the Trial] to testify all and singular what you, or either of you, know in a certain Action now pending undetermined in our Court before Us, between *J. K.* Plaintiff, and *L. M.* Defendant of a Plea of Trespass on the Case, [as the Action is] and at that Day to be tried by a Jury of the Country: And this you, or any of you, are by no Means to omit, under the Penalty upon each of you, of one hundred Pounds. Witness Sir *William Lee*, Knight at *Westminster*, the — Day of [a Day in Term before the Trial and Service] in the — Year of our Reign. *Anthony and Bigge.*

A Præcipe for the Office.

Middlesex, **A** Subpœna to testify for *A.* to wit. Plaintiff, against *C. D.* Defendant, of a Plea of Trespass upon the Case.

R. R. Attorney,
July 1738.

You pay for signing this Writ 1 s. 8
Sealing 7 d.

You must take out a Ticket for each Witness to the following Purport.

To Mr. Benjamin Parker,

BY Virtue of a Writ of *Subpœna* to you directed, and herewith shewn unto you, You are commanded personally to come and appear before the Right Honorable Sir William Lee, Knight, Lord Chief Justice of his Majesty's Court of King's Bench, on Monday the fifteenth Day of July Instant by Eight of the Clock in the forenoon of the same Day, at Westminster Hall in the County of Middlesex, to testify the Truth according to your Knowledge, in a certain Cause now depending, and there to be Tried between Morgan Edwards, Esq; Plaintiff, and Griffith Roberts, Defendant, in a Plea of Trespas on the Case on the Part of the Defendant: And thereof you are not to fail, upon Pain of one Hundred Pounds. Dated the tenth Day of July in the twelfth Year of the reign of our Sovereign Lord George the second, King of Great Britain, &c. in the year of our Lord 1738.

J. S. Attorney

By the Court.

for the Defen-

endant.

If any of your Witnesses should be in Prison, you may have a *Habeas Corpus Testificandum*.

Habeas Cor-
pus ad Testi-
ficandum.

George the Second, by the Grace of God,
of Great Britain, France and Ireland King,
Defender of the Faith, &c. To the War-
den of our Prison of the Fleet, Greeting:
We command you that you have the Body
of *E. F.* detained in our Prison under
your Custody, as it is said, by whatsoever
Name he may be known in the same, un-
der safe and secure Conduct, before our
Right Trusty and Well-beloved Sir *Wil-*
liam Lee, Knight, our Chief Justice, as
signed to hold Pleas in our Court before
Us, at *Westminster Hall* in the County of
Middlesex, on the Day of
[the Day of the Trial] at
o'Clock in the noon of the same Day
there to testify the Truth of his Know-
ledge in a certain Cause now depending
in our Court before Us, and then and there
to be tried between *A. B.* Plaintiff, and
C. D. Defendant, in a Plea of Trespass
of the Case, and then immediately after the
said *E. F.* shall have then and there give
his Testimony before the said Chief Ju-
stice, to return the said *E. F.* to our said
Prison, under safe and secure Conduct,
and have then there this Writ. Witne-
&c. *Anthony and Bigge.*

Of examining
Witnesses on
Interrogatories
before a Judge.

If a Witness be going beyond Sea, so that
he can't be had at the Trial, he may by Rule
of Court be examined before one of the
Judges of the Court upon Interrogatories
but Notice of the Time of the Examina-
tion must be given to the Attorney on the
other

other Side, who shall be at Liberty also to cross-examine him, and the Depositions so taken may be read as Evidence at the Trial.

The Form of the Interrogatories.

Interrogatories to be administered to *E. F.* a Witness to be produced, sworn and examined on the Part and Behalf of *A. B.* Plaintiff against *C. D.* Defendant, before Sir *Edmund Probyn*, Knight, one of his Majesty's Justices of the Court of *King's Bench*, pursuant to a Rule of the said Court, made on *Wednesday* next after the Morrow of *Saint Martin* in the eleventh Year of King *George* the Second.

Imprimis, Do you know the Parties Plaintiff and Defendant in the Title of these Interrogatories named, or either, and which of them, and how long have you known them, either, and which of them? Declare.

Second *Item*, Was you in the Year, &c. or [asking the Witness such proper Questions relating to the Matter in Issue as he is capable of answering.]

Interrogatories for the Defendant. } Interrogatories to be administered on the Behalf of the Defendant to E. F. a Witness to be produced, (as before.)

These Interrogatories must be signed by Counsel; and after the Witness is examined by both Parties, the Judge's Clerk will deliver out Copies of the Depositions.

Writ and Record to be entered together.

In every Cause to be tried before the Judges in their respective Circuits the Writ and Record shall be entered together; and no Record shall be received without the Writ. *Trin. 10, 11 Geo. 2.*

To be entered before first sitting after Commission Day.

No Writ and Record of *Nisi Prius* shall be received at the Assizes in any County in England, unless they shall be delivered and entered with the Marshal, before the first Sitting of the Court after the Commission-Day, except in the Countys of *Tor*

Except in York and Norfolk.

and *Norfolk*; and there the Writs and Records shall be delivered to and entered with the Marshal before the first Sitting of the Court on the second Day after the Commission-Day, otherwise they shall not be received. Every Cause shall be tried in the Order in which it is so entered, without any Preference or Delay, unless it shall be made out to the Satisfaction of the Judge in open Court, that it is impracticable or inconvenient so to do, who thereupon may make such Order for the Trial of the Cause so put off, as to him shall seem just. *14 Geo. 2.*

Cause to be tried in order as entered;

Unless, &c.

without any Preference or Delay, unless it shall be made out to the Satisfaction of the Judge in open Court, that it is impracticable or inconvenient so to do, who thereupon may make such Order for the Trial of the Cause so put off, as to him shall seem just. *14 Geo. 2.*

in the Court of King's Bench. 215

A List of the Causes when so entered as *List of Causes*
foresaid, shall be made by the Marshal, *as entered to*
and forthwith fixed up in some publick Place *be fixed up.*
in the *Nisi Prius* Court, there to remain during
the whole Time of the Assizes. *Same Rule.*

Per Holt. C. J. Where a Tradesman brings
an Action, his Books are not Evidence for
him, yet if the Defendant desires that the
Books may be produced, and the Plaintiff
refuses, his Cause is very suspicious. *Comb.*

61.
If your Cause is to be tried in *London* or *Cause to be en-*
Middlesex within the Term, it must be en- *tered in*
tered in the Judge's Book two Days before *Judge's Book*
the Sitting, for which Notice of Trial is *two Days be-*
given; otherwise a *Ne Recipiatur* may be *fore Sitting.*
entered by the Defendant. *Hil. 15 & 16*

Car. 2.
You pay for entering a Cause 11 s. 8 d.
Ch. Just. 6 s. 8 d. Marsh. 4 s. Cryer 1 s.

If the Cause is to be tried at the Sittings *At Sittings af-*
after Term, no *Ne Recipiatur* can be en- *ter Term no*
tered until after Proclamation made by the *Ne Recipi-*
Order of the Chief Justice for the Attor- *atur till after*
neys to bring in their Records; and then *Proclamation.*
if the Record be not brought in, a *Ne Re-*
cipiatur may be entered.

If the Plaintiff be hindered from trying *Plaintiff hin-*
his Cause by the Defendant's entering a *dred of Trial*
Ne Recipiatur, the Plaintiff may try it the next *by Ne Reci-*
Sitting, if in *London* or *Middlesex*, upon *piatur may*
giving Notice to the Defendant or his At- *try the Cause*
torney on the Day of the Sitting, on which *at next Sitting*
it should have been tried, before the Rising *on Noti.*
of the Court. *Mich. 4 Annæ.*

As he may if not ready at the Day for which first Notice was given.

In like manner, if Notice of Trial be given for a Day certain in London or Middlesex, and the Plaintiff is not ready on that Day to proceed to Trial, the Cause may be tried the next Sitting, upon giving like Notice, as where a *Ne Recipiatur* is entered by Defendant.

If not tried at next Sitting, Notice to be given as at first, unless a Remanet.

But in either Case, if the Cause be not tried at such next Sitting, Notice is to be given as at first, unless it be made a *Remanet*, when new Notice of Trial is never given, but the Defendant is bound to attend till the Cause is tried.

Two Days Notice of Countermand; except.

Two Days Notice of a Countermand of Trial is sufficient, unless it be of a Trial to be had at the Assizes, and the Countermand is given to the Agent in Town; in which Case it ought to be four Days before the Commission-Day. *Sed vide antea fo. 192, 193.*

If Plaintiff don't countermand, Defendant may have his Costs.

If the Plaintiff does not proceed to Trial or countermand in Time, the Defendant on Affidavit of Attendance and necessary Expences, shall have his Costs to be taxed by the Secondary.

Trial not stayed for not paying Costs for not going to Trial on former Notice.

If the Plaintiff gives Notice, but does not proceed to Trial, whereby Costs are taxed for the Defendant, and afterwards gives fresh Notice (perhaps with Design to put the Defendant to further Costs) yet the Court will not stay the Trial till the first Costs are paid (except in Ejectment) because the Defendant has a Remedy for them; and if the Plaintiff should not try the Cause pursuant to his second Notice

the Defendant will again have Costs, and the like Remedy to obtain them.

All Issues to be tried at the Bar are to ^{*Trials at Bar*} be tried by a Special Jury struck by the ^{*by Special Juries.*} Secondary, which is in this Manner: The

Sheriff attends the Secondary with the Book ^{*The Manner*} or List of Freeholders, or Persons qualified ^{*of striking a*} to serve on Juries; and the Secondary, in ^{*Special Jury.*}

the Presence of the Attornies of both Parties, names thereout forty-eight, of which twelve are struck out on each Side, and the remaining twenty-four are to be returned by the Sheriff to try the Issue; and if either of the Parties shall neglect to attend the Secondary on striking a Special Jury, the Secondary on Behalf of the absent Party shall strike out twelve Names. *Trin.*

8 W. 3.

The Secondary and Under-Sheriff had ^{*At the Charge*} formerly each a Guinea a Side from Plain- ^{*of the Party*} tiff and Defendant; but now by Act of ^{*applying for a*} *Geo. 2.* the whole Charge of striking the ^{*Special Jury.*} Special Jury lies on the Party applying for it.

A Trial at Bar is seldom allowed by the ^{*No Trial at*} Court to be in an Issuable Term, unless ^{*Bar in an Issuable Term;*} the Crown is actually concerned in In- ^{*Except.*} terest.

Every Trial at Bar, where the Proceed- ^{*Trial at Bar*} ings are by Original, must be on the ^{*by Original*} *Quarto* ^{*must be on the*} *Die post*, after the Return of the ^{*Quarto Die*} *Venire factus*, as if the *Venire* be returnable on the ^{*post of the*} *Quarto Die* of *St. Martin*, being the 18th of *Venire*. *November*, the Trial must be on the 21st of *November*.

Day of Trial
at Bar to be
appointed by
the Court, but
Plaintiff may
countermand.

The Day of the Trial at Bar is always appointed by the Court; but yet the Plaintiff is at Liberty to countermand his Notice of Trial, and to prevent the Cause being tried on that Day, which if he does, it cannot afterwards be brought to Trial, unless some Day be appointed again by the Court.

After Trial at
Bar no new
Trial, unless,
&c.

After a Trial at Bar no new Trial shall be granted in any Cause, unless it appears, that there has been some Corruption or Misdemeanor in the Jury. *Carth. 507.*

When the Trial is over in *London* and *Middlesex*, the Associate delivers you the Record immediately, and you ingross the *Postea* on the Back of the Record. At the Assizes the Associate keeps the Record till the next Term, and indorses the *Postea*.

Postea for the
Plaintiff on
Non est Fac-
tum.

Afterwards, that is to say, on the Day and at the Place within contained, before Sir *William Lee*, Knight, the Chief Justice within written, *T. H.* Gentleman being associated unto the said Chief Justice, by Force of the Statute in that Case made and provided, the within named *A. B.* (the Plaintiff) came by his Attorney within contained, and the within named *C. D.* (the Defendant) although solemnly demanded came not, but made Default. Therefore

Defendant
makes Default.

let the Jurors of the Jury within mentioned be taken against him by Default; and the Jurors of that Jury being summoned came, who to say the Truth of the within Contents being chosen, tried and sworn say upon their Oath, that the within mentioned Writing obligatory is the Deed of

the within named *C. D.* as the within written *A. B.* has within declared against him; and they assess the Damages of the within named *A. B.* by occasion of the detaining that Debt, over and above his Costs and Charges by him about his Suit in this Behalf expended, to _____ and for those Costs and Charges to forty Shillings.

Afterwards, on the Day and at the Place *Postea at the Assizes.* within contained before Sir *E. N.* Knt. one of the Justices of our Lord the King of the Bench, and Sir *J. T.* Knt. one of the Barons of the *Exchequer* of our said Lord the King, Justices of our said Lord the King assigned to take the Assizes in the County of the City of *Tork*, according to the Form of the Statute, &c. the within named *A. B.* [the Plaintiff] came by, &c.

Afterwards, on the Day and at the Place *Where one of the Judges does not come to the Assizes.* within contained before Sir *J. P.* Knt. one of the Justices of our Lord the King of the Bench, and *F. S.* Esq; to the said Sir *J. P.* and Sir *R. A.* Knt. Chief Baron of the *Exchequer* of our said Lord the King, Justices of our said Lord the King, assigned to take the Assizes in the County of *Cornwal*, by Form of the Statute, &c. in this Behalf associated, the Presence of the said Sir *R. A.* not being expected, by virtue of the Writ of our said Lord the King of *Si non omnes*, &c. the within named *A. B.* came by, &c.

Say, That the within named *C. D.* doth *For Plaintiff* owe to the within named *A. B.* the 500 *l.* *on Nil Debet.* within mentioned, in Manner and Form as
the

the said *A. B.* within complains against him, and assess, &c. (as the last.)

For the Plaintiff on Non Assumpsit.

Say, That the within named *C. D.* did undertake in Manner and Form as the within named *A. B.* within complains against him, and they assess the Damages of the said *A. B.* by occasion of the not performing the within mentioned Promises and Undertakings, over and above his Costs, &c. *ut supra.*

For Plaintiff in Trespass.

Say upon their Oath, That the within named *C. D.* is guilty of the Premises within laid to his Charge, in Manner and Form as the said *A. B.* within complains against him, and they assess the Damages of the said *A. B.* by occasion thereof, over and above, &c.

For Plaintiff on Issue of Plene Administravit.

Say upon their Oath, That the said *Catherine Franklin* has, and on the Day of exhibiting the Bill of the within written *R. J. to wit,* on the tenth Day of *April* in the Year of the Reign of our Sovereign Lord the present King, had diverse Goods and Chattels, which were of the said *Richard Franklin* at the Time of his Death, in her Hands, to be administered, to the Value of the Debt within specified, whereby the said *J. R.* might have been satisfied of his said Debt, *to wit,* at *Marlborough* within written, in the County aforesaid; and they assess the Damages of the said *J. R.* by occasion thereof, over and above his Costs and Charges by him about his Suit in this Behalf expended, *to* and for these Costs and Charges *to 40 s.*

Say

Say upon their Oath, That the said *Charles Trubshawe* is guilty of the Trespass ^{For Plaintiff} in Ejectment. and Ejectment within written, in Manner and Form as the said *William* within complains thereof against him; and they assess the Damages of the said *William* by occasion thereof, over and above, &c.

As to the Trespass and Ejectment of one ^{In Ejectment,} Moiety of the within written Tenements, ^{Guilty as to} they say upon their Oath, that the said *C. D.* ^{Part, Not guilty, as to the Residue.} is guilty thereof, as the said *A. B.* within complains thereof against him; and they assess [*vide antea*] and as to the Trespass and Ejectment of the old Moiety of the Tenements within written, the said Jurors say upon their Oath, that the said *C. D.* is not guilty thereof, as the said *A. B.* has within by Pleading alledged: Therefore, &c.

Say upon their Oath, That the said *Thomas* ^{For Plaintiff} within six Years next before the within written Day of exhibiting the within specified Bill of the said *Edward*, ^{on Non Assumpsit infra sex Annos.} to wit, on the within written first Day of *April* in the Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. in the within written Declaration specified, undertook in Manner and Form as the said *Edward* has within by replying alledged; and they assess, &c.

And the Jurors of that Jury being summoned came, who to say the Truth of the within Contents were chosen, tried and sworn, and after Evidence being given to them ^{Plaintiff Non-processed.}

them of and upon the Issue within contained, went from the Bar of this Court to discourse of their Verdict of and upon the Premisses; and after the said Jury had discoursed and agreed among themselves, they came back to the said Bar to give their Verdict in this Behalf; upon which the said *Thomas Messiter* being solemnly demanded came not, nor did he further prosecute his said Bill against the said *Thomas*. Therefore, &c.

For the Defendant's Damages, according to the Form of the Statute, to 5 l. 10 l.

Furor withdrawn.

Were chose, tried and sworn, upon which for certain Causes moving as well the said Chief Justice as the Parties *E. F.* one of the Jurors of the said Jury was withdrawn from the Panel, and the Residue of the Jurors of that Jury were intirely discharged from giving any Verdict of and upon the within written Premisses, &c.

For the Defendants on Not Guilty in Trespass.

Say upon their Oaths, That the said *Thomas King* and *Obadiab Reynolds* are in no wise guilty of the Trespass in the Declaration within specified, as the said *Thomas* and *Obadiab* have by their Pleading within alledged. Therefore, &c.

For the Defendant in Trespass on the Statute of Limitations pleaded.

Say upon their Oaths, That the said *Edward* did not at any Time within six Years next before the Suing out the said Writ break and enter the House of the said *Thomas*, nor take and carry away the Goods and Chattels, and Money of the said *Thomas* within contained, as the said *Thomas* has within by replying alledged, &c.

Say

Say upon their Oath, That the said *Edward*, at the Time of exhibiting the Bill of the said *Robert* within specified, had fully administered all the Goods and Chattels which were of the said *Thomas* at the Time of his Death, in his Hands to be administered; and that he the said *Edward* has not, nor on the Day of exhibiting the within specified Bill, or at any time afterwards, had any Goods or Chattels which were of the said *Thomas* at the Time of his Death, in his Hands to be administered, wherewith he was able to pay the Debt within specified, or any Part thereof, to the said *Robert*, as he in Bar of the said *Robert* has within by Pleading alledged.

For the Defendant on Plene Administravit.

Say upon their Oath, That the said *C. D.* on the Day, &c. had divers Goods and Chattels, which were of the within named *L. K.* at the Time of his Death, in his Hands to be administered, to the Value of, &c. whereof he might have satisfied the said *A. B.* the within written Debt, as the said *A. B.* within by replying has alledged, and they assess, &c.

For the Plaintiff in Plene Administravit.

Say upon their Oaths, That the within named *William Bulkly*, the Testator, did not in his Life-time undertake in Manner and Form as the said *William* has within declared.

For Defendant Executor, that his Testator Non Assumpsit.

Afterwards, on the Day and at the Place within contained before *Philip Lord Hardwicke* Chief Justice within named, and *Carle Hayward*, Gentleman, associate to him Form of the Statute in that Case made

and

and provided, cometh as well the within named *S. W.* (the Plaintiff) as the within written *J. M.* (the Defendant) by their Attorneys within mentioned, and certain of the Jurors of the Jury whereof Mention is within made, *to wit, J. T. &c.* being drawn by Ballot, according to the Form of the Statute, &c. and being called over likewise come, who to speak the Truth of the Matters within contained, being elected, tried and sworn, conferred together about giving their Verdict; and having conferred together, were agreed to give their Verdict. Whereupon the said *S. W.* although solemnly called, cometh not, nor hath he further prosecuted his Writ within mentioned against the said *J. M.* Therefore, &c.

Trespass and Assault.

Say upon their Oath, That the within named *C. D.* is guilty of the within written Trespass and Assault, as the said *A. B.* within complains against him; and the assess, &c.

Part for the Plaintiff, Part for the Defendant, sur Assumpsit.

As to the first and last Promise in the Declaration within mentioned, they say upon their Oath, that the said *C. D.* undertook in Manner and Form as the said *A. B.* within complains against him, and the assess the Damages of the said *A. B.* by occasion thereof, over and above his Costs and Charges by him about his Suit in this Bar half expended, to 10 *l.* and for those Costs and Charges to 40 *s.* and as to the Residue of the Promises and Undertakings in the said Declaration also within mentioned, the said Jurors further upon their said Oath say

that the said *C. D.* did not undertake in Manner and Form as the said *C. D.* within by pleading for himself has alledged. Therefore, &c.

Say upon their Oath, That the said *One Defendant* *R. P.* is guilty of the Trespass within writ-^{guilty in Tres-}ten, as the said *A. B.* within complains ^{pass, the others} thereof against him, and they assess Da-^{not.}mages, &c. And the said Jury further upon their said Oath say, that the said *J.* and *W.* are not guilty of that Trespass, as the said *J.* and *W.* within by pleading for themselves have alledged. Therefore, &c.

As to the Issue within written, be-^{On several Is-}ween the said *A. B.* and the said *J.* and ^{sues in Assault}*W.* within joined, they say upon their ^{and Imprison-}Oath, that the said *J.* and *W.* are guilty of ^{ment.}the Trespass, Assault, and Imprisonment within written, as the said *A. B.* within complains thereof against them; and as to the other Issue within written between the said *A. B.* and the said *G.* within first joined, the say Jurors upon their Oath further say, that the said *G.* is guilty thereof, as the said *A. B.* within complains thereof against him. And as to the last Issue within written between the said *A. B.* and the said *G.* within last also joined, the said Jurors upon their said Oath further say, that the said *G.* on the Day and Year within written of his own proper Injury, without the Cause by him within alledged, made an Assault on the said *A. B.* and beat, wounded, and ill treated him, so that his Life was greatly impaired of, in Manner and Form, as the

said *A. B.* within by replying has alledged; and they assess the Damages of the said *A. B.* by the Occasion within written, over and above, &c.

For the Plaintiff in a Plea of solvit ad Diem.

Say upon their Oath, That the said *C. D.* did not pay to the said *A. B.* the within Sum of 10*l.* upon the within written Day of which upon that Day he ought to have paid as, &c. and they assess, &c.

Postea to be marked before Costs taxed.

Every Attorney who receives any *Postea* from the Associate ought to get it mark'd by the Clerk of the *Posteas* within two Days after he receives it. *Trin. 2 Jac. 1.* But now it is thought sufficient if the *Postea* is marked at any Time before the Costs are taxed; you pay the Clerk of the *Posteas* 4*d.* then you give a Rule on the *Postea* with the Clerk of the Rules, for which you pay 1*s.* 4*d.*

Four Days to move in Arrest of Judgment, or for a new Trial.

No Judgment can be entered upon a Writ of *Nisi Prius*, or Inquiry given either for Plaintiff or Defendant, until the Expiration of four Days, exclusive of the Entry of a Rule for Judgment, during which four Days the Party, against whom the Verdict passed, may move the Court in Arrest of Judgment, or for a new Trial.

Sunday, or any Day on which the Court does not sit, is not accounted one of the 4 Days, Except.

Sunday, or any other Day on which the Court doth not sit, is not accounted one of the four Days, unless the Rule be entered on the last Day of the Term, or within four Days after the Term, (during which four Days it is the Practice to enter these Rules as of the last Day of the Term); and

the Expiration of four Days exclusive after entering such Rule, Judgment may be entered.

This Rule ought not to be entered before *Rule not to be* the Day in Bank, and is not necessary if *given before* the Plaintiff be nonsuited, but Judgment in *Day in Bank,* that Case may be entered immediately after *or on a Non-suit.* the Day in Bank.

If the Party moves for new Trial, and it *No Motion for* is denied, he may afterwards move in Ar- *a new Trial* rest of Judgment; but if he moves in Ar- *after Motion* rest of Judgment and fails, he cannot after- *in Arrest of* wards move for a new Trial. *Judgment.*

After the Rule for Judgment is out, you *Of signing* must get the *Nisi Prius* Record stamped *final Judg-* with a double Half-Crown Stamp, and then *ment.* apply to the Secondary to tax the Costs: Which being done, the Judgment to be entered of Record, and such Execution as may be proper sued out.

If the Issue joined be not an Issue in Fact, *Method of go-* but an Issue in Law, as a Demurrer, then *ing to Argu-* as soon as the Paper-Book is returned, you *ment on De-* must enter the Proceedings on Record, *murrer.* which being brought into Court, you get a Counsel to move for a *Concilium*, and then enter the Cause with the Clerk of the Papers, and deliver the Paper-Books to the Judges in Manner before directed; and the Court upon the Argument will give Judgment.

Of Judgments by Default, &c.

*Judgments by
Default in
Debt.*

Judgments by Default in Debt. Where the Defendant does not plead by the Time limited, or Judgment is given against him on Demurrer, if it be in Debt, the Judgment is final, to be signed on a double Half-Crown Stamp'd Sheet of Paper, on which and on a Judgment Roll the Judgment is to be entered in Manner as hereafter is directed. If the Action is in case, Trespass, &c. the Judgment is only interlocutory, till a Writ of Inquiry be executed, and is signed on a double Penny Stamp'd Sheet of Paper. *Vide Carth. 362, 370.*

You give the like Notice in all Cases of executing a Writ of Inquiry, as of a Trial, except where the Defendant lives above forty Miles from London. *Vide antea* fo. 192. & fo. 193.

Writ of In-
quiry.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting. Whereas A. B. lately in our Court, before us at Westminster, by Bill, without our Writing impleaded C. D. being in the Custody of the Marshal of our Marshalsea, before us for this, *to wit*, that whereas the said C. D. on [set forth the whole Declaration (only instead of saying in the Year of the Reign of, &c. say in the Year of our Reign) to] To the Damage of the said A. B. of Pounds, as he said, and there

upon he then brought his Suit, &c. and such Proceedings were thereupon had in our said Court before us at *Westminster*, that the said *A. B.* ought to recover his Damages by Means of the Premises, [or of not performing the said several Promises and Undertakings] against the said *C. D.* But because it is unknown to our said Court before us, what Damages the said *A. B.* hath sustained by Means of the aforesaid Premises; We therefore command you, that by the Oath of * twelve good and lawful Men of your Bailiwick you diligently inquire what Damages the said *A. B.* hath sustained, as well by Means of the Premises aforesaid, as for his Costs and Charges by him about his Suit in this Behalf expended, and that you send to us at *Westminster* on next after the Inquisition, which you shall thereupon make, under your Seal, and the Seals of them by whose Oaths you shall take that Inquisition; together with this Writ. Witness Sir *William Lee*, Knt. at *Westminster*, the Day of the Year of our Reign.

Anthony and Bigge.

* There cannot be less than twelve, though the Spirit of Inquiry generally sayeth only *per Sacramentum proborum & legalium hominum*, and not *duodecim* as in a *Venue. 1 Ventris 113.*

Exception, the Sum is in Figures; *non allocatur*, if they are XII Latin Figures; *aliter*, if they had been 12 English Figures, or in Figures in an inferior Court. *Skinner 409. V. 1 Mod. 2.*

Q 3

This

This Writ is not signed, but only sealed, for which you pay 7 *d.*

If executed in *Middlesex*, you pay the Sheriff 1 *l.* 10 *s.* 4 *d.* which is divided thus, to the Sheriff 10 *s.* Under-Sheriff 3 *s.* 4 *d.* Bailiff for summoning the Jury 4 *s.* for the Room 1 *s.* to the Jurors 1 *s.* each, 12 *s.* besides 4 *d.* for each Witness sworn.

You may have a *Subpoena*, if Occasion be, for your Witnesses.

Subpoena on Inquiry.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To *E. F. G. H. &c.* Greeting: We command you, that all and singular Busineses and Excuses being laid aside, you, and every one of you, be in your proper Persons before our Sheriff of *Middlesex*, on the Day of at o'Clock in the noon of the same Day, at the Court-House at *Westminster* [if in Vacation, or in an Afternoon in Term-Time (at the *Three Tuns* in *Brookstreet*, near *Holborn*)] in the County of *Middlesex*, to testify the Truth in a certain Matter of Controversy pending in our Court, before us at *Westminster*, between *A. B.* Plaintiff, and *C. D.* Defendant, on a Plea of [as the Action is] And this you or any of you, are by no means to omit under the Penalty upon each of you of 100 *l.* Witness, &c.

You sign and seal this Writ, and make out a Note for the Office, and Tickets for the Witnesses, as before directed.

When the Writ of Inquiry is executed, and returned by the Sheriff, you give a Rule for Judgment as on a *Postea*, and when that is out you get the Inquisition stamped with a double Half-Crown Stamp, Tax you Costs *de Incremento* thereon, and enter up final Judgment; of which see hereafter.

If a Judgment be strictly regular, yet *When Judgment, though regular may be set aside.* the Plaintiff has not lost a Trial, the Court has in many Instances, upon Payment of Costs, pleading to Issue, and accepting Notice of Trial within the Term set aside such Judgment, that the Merits of the Cause might be tried.

If there be Irregularity in the Process, *Advantage of Irregularities to be taken as soon as happen.* or any of the Proceedings before or after Judgment, it behoves the Attorney for the Defendant, if he has a Mind to take Advantage of it, to apply to the Court as soon as the Irregularity happens; for in many Cases where the Defendant after an Irregularity has lain still, and let the Plaintiff proceed, and be at great Expence, and then as come and complained of it, the Court has refused to assist him, as such Practice proceeds from a Design to put the Plaintiff to unnecessary Charge, or to delay the Suit, and ought to be discouraged.

Many times the Defendant, when first arrested, will on Time given him for Payment of the Debt, or on other Terms give

Warrant of Attorney to confess Judgment by a Person in Custody not binding, unless his Attorney present.

a Warrant of Attorney for confessing Judgment. But *Note*; No Warrant of Attorney for confessing a Judgment executed by any Person in Custody of any Sheriff or other Officer, shall be of any Force, unless some Attorney for and on Behalf of such Person in Custody, and expressly named by him, be present to inform him of the Nature of such Warrant, which Attorney shall subscribe his Name, as a Witness to the due Execution thereof. *Easter 15 Car. 2.*

When an Attorney's Presence is not necessary.

If the Defendant is arrested, and in Execution, and one becomes bound for him to the Plaintiff, and the Defendant gives him Judgment for his Counter-Security, it is good, though no Attorney be present; and it is not within the common Rule of the Court, because it was not given to the Person himself (in which Case there must be an Attorney present) but to a third Person. *5 Mod. 144. 1 Salk. 402. 6 Mod. 85, 163. 1 Mod. 1. Comb. 76, 224.*

When Party's Death a Countermand.

A Man gives a Warrant of Attorney to confess a Judgment, and dies before the Judgment is confessed, this is a Countermand. *1 Ventris 310.*

Of a Warrant to enter up a Judgment of the precedent Term.

If a Warrant of Attorney be given after the Continuance Day to enter up a Judgment as of the Term preceding, this may be well enough, if it be dated within the Term: But it cannot be so, if such a Warrant be given to confess a Judgment generally, and dated after the Term. *1 Ventris 113.*

Where

Where a Warrant of Attorney is given for confessing a Judgment to be entered of a certain Term therein mentioned, Judgment can be entered only of that Term. *Judgment to be entered of Term mentioned in Warrant of Attorney.*
V. 1 Mod. 1.

If the Warrant be to confess Judgment generally, without expressing any particular Term, or does express that it be entered of a particular Term, or any Term subsequent to it, Judgment may be entered of any subsequent Term; but if not entered with- *How if no Term mentioned, or a particular Term, or any Term subsequent thereto.*

in the first four Terms next after the Date of the Warrant, the Court must be moved for Leave to enter the Judgment upon Affidavit made of the due Execution of the Warrant of Attorney, and that both Parties are living, and the Debt or Part thereof is unsatisfied; if entered otherwise, the Court on Motion will set it aside.

The Defendant often after Declaration will, on a Stay of Execution for a Time, give Judgment by *Cognovit Actionem*, and in case of Trespass, &c. to save a Writ of Inquiry, admit Damages by under-writing of Inquiry. *Judgment by Cognovit Actionem & Dampna to save Charges of Inquiry.*
The Declaration thus: 'I acknowledge this Action, and admit that the Plaintiff A. B. has sustained Damages to 50 l' [according as the Sum is.] But in this Case I think the Defendant's Attorney should be present, and a Witness.

Of Entering Judgments.

EVERY Judgment in Debt, Case, Covenant, Trespass, Trover, and every other Action, is to be entered fairly on the Roll, *Judgments or Incipiturs thereof to be entered on the Roll before signed.*

Roll, or an *Incipitur* thereof, before such Judgment shall be signed by the Secondary, or any Judge of this Court, and the Names of the Plaintiff and Defendant, with the County where the Action is laid, and the Nature of the Action with the Attorney's Name are to be entered on the Book kept by the Secondary for that Purpose. *Mich. 5 Annæ.*

How Judgments ought to be entered on the Roll.

All Issues and Judgments ought to be entered on the Rolls in a full fair Hand, with a large Margin of an Inch at least, and a convenient Distance at the top [of about nine Inches, the Breadth of the Roll] for binding up the same, and at the bottom; that the Writing be not rubbed out. *Hil. 1657.*

Warrants of Attorney to be entered.

Warrants of Attorney for Plaintiff and Defendant ought to be entered on every Judgment-Roll before the Entry of the Judgment; otherwise such Roll not to be filed. *Easter 4 Jac. 2.*

You begin your Entry thus:

As yet of Michaelmas Term [as the Term is] Witness Sir William Lee, Knight.

Warrant of Attorney for the Plaintiff.

London. A. B. puts in his Place E. F. his Attorney, against C. D. in a Plea of Trespass of the Case [according as the Action is, and if the Defendant be described by an Alias Dict' in the Declaration, or be or the Plaintiff be an Executor or Administrator, be must be so mentioned in the Warrant.]

London.

London. C. D. puts in his Place G. H. his Warrant of Attorney, against A. B. in the Plea afore-
Attorney for the Defendant.
 said.

London. Be it remembered, That [*here On a Verdict*
 enter the Memorandum and Declaration, ac- in London.
 cording to the Directions before given fol.

[If it be a Judgment on a Verdict, you enter
 to the End of the Issue, viz. The same Day
 is given to the Parties aforesaid, at the same
 Place, [then go on thus] Afterwards the
 Process being continued between the Par-
 ties aforesaid, of the Plea aforesaid, by the
 Jury being respited between them before
 our Lord the King at Westminster, until
 next after [the Return of
 the Distringas] then next following, unless * * If at the As-
 the King's Right Trusty and Well-beloved sizes, say the
 Sir William Lee, Knight, his Chief Justice Justices of our
 assigned to hold Pleas before the King him- Lord the King,
 self, shall first come, on the assigned to keep
 Day of the Assizes in
 at † the Guildhall of the the County
 City of London, according to the Form of aforesaid, shall
 the Statute in such Case made and provi- first come.
 ded, for Default of the Jurors, because † The Place
 none of them did appear; at which Day they are held
 at.
 before our Lord the King at Westminster, the
 aforesaid A. B. comes by the said E. F. his || The said Ju-
 Attorney aforesaid; and || the said Chief stices of our
 Justice, before whom the said Issue was said Lord the
 tried, sent hither § his Record had in these § King.
 Words, Afterwards, That is to say, on the Postea.
 Day, and at the Place within contained
 before

**** T. P. Knt.** before **** Sir William Lee**, Knight, the
one of the Barons of our Lord the King's Exchequer, Chief Justice within written, Gen-
and Sir E. P. Knt. one of the Justices of our Lord the King, assigned to hold Pleas before the King himself, Jus- tices of our Lord the King assigned to take the Assizes in the said County of — by Force of the Statute, came the within named *Exc.* **C. D.** although solemnly demanded, came not, but made Default: Therefore let the Jurors of the Jury within mentioned be taken against him by Default; and the Jurors of that Jury having been summoned come, to wit, *G. H. J. K. L. M. &c.* who being chosen, tried and sworn to declare the Truth of the Issue within contained, upon their Oath say, That the within named *Exc.* **C. D.** did undertake in Manner and Form as the within named *Exc.* **A. B.** within complains against him,

Verdict for the Plaintiff on Non Assump- sit. and assess the Damages of the said *Exc.* **A. B.** by occasion of the not performing the Promises and Undertakings within mentioned, over and above his Costs and Charges by him about his Suit in this Behalf expended, to and for those Costs and Charges,

Judgment signed the Day of 1738.

Costs de Incremento.

to Therefore it is considered, that the said *Exc.* **A. B.** recover against the said *Exc.* **C. D.** his said Damages by the said Jury in Form aforesaid assessed, and also for his said Costs and Charges, by the Court of our said Lord the King now here adjudged of Increase to the said *Exc.* **A. B.** by his Assent, which Damages in the whole amount to and the said *Exc.* **C.** in Mercy, &c.

Error

Error of a Judgment in *B. R. in Ireland*, *Mistake of the*
 where *Robert Meredith* was Plaintiff, and *Plaintiff's*
 that Judgment was entered, *Quod prad' Ca-* *Name in a*
rolus Meredith recuperet. *Judgment*
amended.

And the Court held it amendable as the
 Default of the Clerk, though in the Judg-
 ment, the Misprision being only in the
 Name which was right in the rest of the
 Record that was before the Court, and
 should have directed him. *1 Ventris 217.*

The not entering the Words *Misericordia* *Of the Words*
 or *Capiatur*, or putting the one for the *Capiatur and*
 other, is helped by the Statute *16, 17 Car. dia.*
2. c. 8.

Since Statute *5, 6 W. & M.* which takes *Capiatur*
 away the *Capiatur Fine* in Actions *vi & Ar-* *Clause to be*
mis, no Judgment of *Capiatur* shall be en- *wholly omit-*
 tered against the Defendant, nor any thing *ted.*
 in lieu thereof, but that Clause shall be to-
 tally left out of the Judgment. *Carth. 390.*

If the Cause be not tried within the *How to enter*
 Term next after the Term in which the *Continuances*
 Issue was joined, you must continue the
Venire on the Roll by *Vic' non misit Breve* ;
 as suppose an Issue joined in *Hilary* Term,
 and tried in the Sittings after *Easter* ; after
 the Words, " The same Day [*the Return*
of the first Venire, some Day in Hilary] is
 given to the Parties aforesaid, at the
 " same Place", say, " at which Day be-
 fore our Lord the King, at *Westminster*,
 " came the Parties aforesaid, by their At-
 tornies aforesaid, and the Sheriffs of *Lon-* *By Vic' non*
 " *don* did not return the said Writ, nor did *misit Breve.*
 " they

New Venire “ they do any thing thereupon ; therefore
awarded. “ let a Jury, as before, come before our
 “ Lord the King, at *Westminster*, on
 “ next after [the first Day
 “ of *Easter Term*] and who are in no wife
 “ of kin either to the said *A. B.* or to the
 “ said *C. D.* to take Cognizance upon their
 “ Oaths of the whole Truth of the Pre-
 “ misses ; because as well the said *C. D.* as
 “ the said *A. B.* have put themselves upon
 “ that Jury. The same Day is given to
 “ the Parties aforesaid, at the same Place.
 “ Afterwards, the Process being continued
 “ between the Parties aforesaid, of the Plea
 “ aforesaid, by the Jury being respited be-
 “ tween them before our Lord the King,
 “ at *Westminster*, until next after
 “ (the first Day of *Trinity Term*,
 “ being the Return of the *Distringas*) then
 “ next following, unless the King’s Right
 “ Trusty, &c. as before.”

And in this manner, in case there should be several Terms between the Term in which your Issue is joined, and the Term in which it is tried, you continue awarding *Venires* on the Roll from Term to Term, on the Suggestion that the Sheriff does not return the Writs, to the Term the *Distringas* is sued out, which should bear Teste the Day of the Return of the *Venire*.

You may enter your Issues on both Sides the Roll, but should not write too near the Bottom on the first Side, where you are to write the Number-Roll, and Chief Clerk’s Name thus,

Roll 526.

Anthony and Bigge.

And when you have occasion to write on the Back-side, you begin over against the first Line of your Memorandum, leaving at least an Inch Margin.

It is therefore considered, That the said *Edward* recover against the said *Thomas* his said Debt, and the aforesaid Damages by the said Jury in Form aforesaid assessed, and also eighteen Pounds for his said Costs and Charges by the Court of our said Lord the King now here adjudged of Increase to the said *Edward* by his Assent, which Damages in the whole amount to.

And the said *Richard* and *Cadogan* by their Attorney, come and defend the Force and Injury, &c. and pray Judgment of the said Declaration, because they say, That the said Declaration, and the Matter contained therein, are not sufficient in Law to maintain the said Action of the said *John*, *James*, and *Mary*, against them the said *Richard* and *Cadogan*; to which said Declaration they the said *Richard* and *Cadogan* have no need, nor are they obliged by the Law of the Land to answer: And as they are ready to verify: Wherefore they want of a sufficient Declaration in this case the said *Richard* and *Cadogan* pray Judgment of the said Declaration, and that the said Declaration may be quashed, &c.

And the said *John*, *James* and *Mary* say, Joinder. That the said Declaration, and the Matter therein contained, are sufficient in the Law for

Judgment against the Defendant on Verdict in Debt.

On a Demurrer in Abatement to a Declaration.

for them the said *John, James* and *Mary* to maintain their said Action against the said *Richard* and *Cadogan*, which said Declaration, and the Matter therein contained, the said *John, James* and *Mary* are ready to verify and prove, as the Court, &c. Wherefore, for that the said *Richard* and *Cadogan* do not deny the said Matter in the said Declaration, nor make any Answer thereto, the said *John, James* and *Mary* pray Judgment, and their Damages by occasion of the Premisses to be adjudged to them, &c. And because the Court of our said Lord the King, now here, is not yet advised what Judgment to give of and concerning the Premisses, a Day is given to the said Parties, That they be before our Lord the King, at *Westminster*, on

Continuance by
Curia advi-
sare vult.

next after to hear their Judgment thereon, because the said Court of our said Lord the King, now here, is not yet advised thereof. At which Day before our said Lord the King, at *Westminster*, came the said Parties by their Attornies aforesaid; upon which, all and singular the said Premisses being seen, and by the Court of our said Lord the King now here fully understood and considered, and mature Deliberation being had thereupon, it appears to the Court of our said Lord the King, now here, that the said Declaration, and the Matter therein contained are sufficient in Law for them the said *John, James* and *Mary*, to maintain their said Action against the said *Richard* and *Cadogan*.

Interlocutory
Judgment for
the Plaintiff.

Cadogan; wherefore the said *John*, *James* and *Mary* ought to recover their Damages against the said *Richard* and *Cadogan*, by Occasion of the Premisses aforesaid. But ^{Inquiry a-} because it is unknown to the Court of our ^{warded.} said Lord the King, now here, what Damages they the said *John*, *James* and *Mary* have sustained by Occasion of the Premisses; Therefore it is commanded to the Sheriff of *Middlesex*, that by the Oath of twelve good and lawful Men of his Bailiwick he diligently inquire what Damages they the said *John*, *James* and *Mary* have sustained, as well by Occasion of the Premisses, as for their Costs and Charges by them about their Suit in this Behalf expended; and that he send the Inquisition, which, &c. to our Lord the King, at *Westminster*, on next after under the Seal, &c. and the Seals, &c. together with the Writ of our said Lord the King to him thereupon directed, &c. The same Day is given to the said *John*, *James* and *Mary*, at the same Place, &c.

See after for Entry of the Return of the Inquiry and final Judgment thereon.

And the said *William*, by *Robert Bicknell* Judgment by his Attorney, comes and defends the Force ^{Cognovit} and Injury, when, &c. and says, that he ^{Actionem &c} cannot deny the said Action of the said ^{Damna, to} *John*, nor but that he the said *William* un- ^{save the}dertook in Manner and Form as the said ^{Charges of ex-} *John* above complains against him; nor also ^{curring an In-} but that the said *John* has sustained Da-

mages by Occasion of the not performing the said Promises and Undertakings, to 57 l. 4 s. 6 d. as the said *John* has by his Declaration above supposed; and upon this the said *John* prays Judgment, and the said Damages so acknowledged, together with his Costs and Charges by him about his Suit in this Behalf expended, to be adjudged to him, &c. Therefore it is considered, that the said *John* do recover against the said *Richard* his said Damages, to 57 l. 4 s. 6 d. above acknowledged; and also six Pounds for his said Costs and Charges, by the Court of our said Lord the King now here adjudged to the said *John* by his Assent; which said Damages in the whole amount to 63 l. 4 s. 6 d. And the said *William* in Mercy, &c.

*Judgment
in Debt by
Non Sum In-
formatus,
without an Im-
parlance.*

And the said *Benjamin*, by *Thomas Owen* his Attorney, comes and defends the Force and Injury, when, &c. and the said *Andrew* prays, that the said *Benjamin* may answer to his said Declaration; upon which the said Attorney of the said *Benjamin* says that he is not informed by the said *Benjamin* of any Answer to be given for the said *Benjamin* to the said *Andrew* in the Premises; nor does he say any thing else in Bar or Preclusion of the said Action of the said *Andrew*; by which the said *Andrew* remains thereof undefended against the said *Benjamin*, &c. Therefore it is considered that the said *Andrew* do recover against the said *Benjamin* his said Debt, and also thirty

*Judgment
signed the
Day of
1738.*

fix Shillings and four Pence, for his Damages which he has sustained, as well by Occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in this Behalf expended, by the Court of our said Lord the King now here adjudged to the said *Andrew* by his Assent. And the said *Benjamin* in Mercy, &c.

And the said *Charles* in his proper Person Nil Dicit in comes and defends the Force and Injury, Debt of the when, &c. and prays Leave to imparle to same Term. the said Bill; and it is given to him, &c. And upon this a Day is given to the Parties afore said, before our Lord the King, at *Westminster*, until next after (the Day the Rule to plead is out) to wit, to the said *Charles* to imparle, and then to answer, &c. At which Day before our Lord the King, at *Westminster*, comes the said *Anthony* by his Attorney afore said; And the said *Charles* at that Day, though solemnly demanded, comes not, nor does he say any thing in Bar or Preclusion of the said Action of the said *Anthony*, by which, &c. (as in the last to the End.)

And now at this Day, to wit, on Nil Dicit in next after (the first Day of the Term Debt, with an Judgment is entered) in this same Term, Impar lance. until which Day the said *Charles Danvers* had Leave to imparle to the said Bill, and then to answer thereunto, &c. before our Lord the King, at *Westminster*, the said *Andrew Baker* came by his Attorney afore-

said ; and the said *Charles Danvers*, although at the same Day solemnly demanded, came not, nor does he say any thing in Bar or Preclusion of, &c. (as before to the End).

*Nil Dicit in
Case, of the
same Term
with the De-
claration.*

And the said *Edward* by *A. B.* his Attorney comes and defends the Force and Injury, when, &c. And the said *Abraham* prays that the said *Edward* may answer to his said Declaration ; And upon this the said *Edward* prays Leave to imparle to the said Bill of the said *Abraham*, until

next after (*the Day the Rule is out*) and it is given to him, &c. The same Day is given to the said *Abraham*, at the same Place, &c. At which Day before our Lord the King at *Westminster* came the said *Abraham* by his Attorney aforesaid ; and the said *Edward* at that Day, though solemnly demanded to answer, came not, nor does he say any thing in Bar or Preclusion of the said Action of the said *Abraham* ; by which the said *Abraham* remains thereof undefended against him, &c. Wherefore the said *Abraham* ought to recover against the said *Edward* his Damages by Occasion of the Premises ; but because it is unknown to the Court of our Lord the King now here, what Damages the said *Abraham* has sustained in this Case, by the Occasion aforesaid ; Therefore it is Comanded to the Sheriff, That by the Oath of twelve good and lawful Men of his Bailiwick he diligently inquire what Da-

*Inquiry A-
warded.*

mage

images the said *Abraham* has sustained, as well by Occasion of the Premisses, as for his Costs and Charges by him about his Suit in this Behalf expended, and that he send the Inquisition, which he shall thereupon take, to our Lord the King at *Westminster*, on next after (the Return) under his Seal, and the Seals of those by whose Oaths he should take the said Inquisition, together with the Writ of our said Lord the King to him thereupon directed. The same Day is given to the said *Abraham*, at the same Place. At which Day, before our Lord the King at *Westminster*, came the said *Abraham* by his Attorney aforesaid; and the Sheriff, to wit, *A. M. Esq;* Sheriff of the said County of returned a certain Inquisition taken before him at in the said County of on the

The Return.

Day of in the Year of the Reign of our Sovereign Lord *George the Second*, now King of *Great Britain, &c.* by the Oath of twelve good and lawful Men of his Bailiwick; by which it is found, that the said *Abraham* has sustained Damages by Occasion of the Premisses, over and above his Costs and Charges by him about his Suit in this Behalf expended, to one hundred Pounds; and for those Costs and Charges, to forty Shillings. Therefore it is considered, that the said *Abraham* recover against the said *Edward* his Damages aforesaid, by the said Inquisition above found; and also fourteen

Judgment signed Day of 1738.

Pounds nineteen Shillings and six Pence for his said Costs and Charges, by the Court of our said Lord the King now here adjudged of Increase to the said *Abraham* by his Assent, which Damages in the whole amount to one hundred and sixteen Pounds nineteen Shillings and six Pence. And the said *Edward* in Mercy, &c.

Nil Dicit in
Case with an
Impar lance.

And now at this Day, to wit, next after (the first Day of the Term Judgment is entered) in this same Term, to which Day the said *Christopher Denton* had Leave to Imparle to the said Bill, and then to answer, &c. before our Lord the King at *Westminster*, the said *Evan Thomas* came by his Attorney aforesaid, and prays that the said *Christopher Denton* may answer his said Declaration; And the said *Christopher Denton*, although at that Day solemnly demanded came not, nor does he say any thing in Bar or Preclusion of the said Action of the said *Evan*; by which the said *Evan Thomas* remains thereof undefended against him: Wherefore the said *Evan Thomas* ought to recover against the said *Christopher Denton* his Damages by * Occasion of the Premises. But because, &c. (as before)

* If in Trespass you say, by Occasion of the said Trespass.

If in Assault, by Occasion of the said Trespass and Assault.

in the Court of King's Bench. 247

If in Trespass, Assault and Imprisonment, by Occasion of the said Trespass, Assault and Imprisonment.

If in Covenant, by Occasion of breaking the said Covenant.

If in *Assumpsit*, by the Occasion of not performing the said Promises and Undertakings.

No Plea-Roll to be filed after the End *No Plea Roll*
of the Term next following that of which *to be filed af-*
it ought to be filed, unless by a Rule of *ter the Term*
Court. *Easter 9 W. 3.* *following that,*
which it ought
to be filed of.

Every Attorney ought to bring into the *Time for filing*
Office all his Rolls fairly ingrossed by the *Rolls.*
Times limited by former Rules, *viz. Mich.*
9 and Trin. 10 W. 3. That is to say, his
Rolls of *Trinity*, *Michaelmas*, and *Hilary*
Terms before the Effoin-Day of every
subsequent Term, and his Rolls of *Easter*
Term before the first Day of *Trinity* Term.
Mich. 5 Annæ.

But the *Custos Brevium*, in Indulgence
of the Clerks, attends the Day but one be-
fore every Term, except *Trinity*, when he
attends the Day preceding that Term to
receive and file their Rolls.

If no Execution be sued out within a *Judgment*
Year after Judgment is obtained, the *to be revived*
Judgment must be revived by *Scire Facias*; *by Sci. Fa. if*
and the Plaintiff may, at any Time within *no Execution*
a Year of the issuing the *Scire Facias*, *within a Year.*
due forth any Execution, and continue

the same on the Roll on which the *Scire Facias* is entered ; but if he doth not take out Execution within the Year, the Judgment must be again revived by *Scire Facias*, as at first.

Judgment entered 10 Years Sci. Fa. to be moved for. If a Judgment has been entered ten Years, and no Execution taken out, the Plaintiff cannot sue out a *Scire Facias* to revive it without Leave of the Court.

Execution sued out and continued on the Roll as effectual as Sci. fa. Upon a Judgment obtained, and all Parties living, if a *Fi. fa. Ca. fa.* or *Elegit* be taken within the Year and returned and awarded upon the Roll, the same may be continued down from Term to Term to the Time of the Execution thereof, although after the Year, and shall be as good as if the Judgment had been revived by *Scire Facias*.

Judgment may be entered if Defendant dies after Day in Bank. If the Defendant appear and imparle until the first Day of the next Term, and die after the Day in Bank, yet if a Rule be given for Answer, and no Plea be pleaded, Judgment may be entered against him that next Term by Default, as of the first Day of the Term.

Of Executions.

THERE are three Sorts of Executions, viz. a *Capias ad Satisfaciendum* a-
 Execution. against the Body, a *Fieri Facias* against the Goods and Chattels, and an *Elegit* against the Goods and Chattels, (except the Oxen and Beasts of the Plough) and against one Moiety of the Defendant's Lands and Tenements.

The Body or Lands of the Defendant, were not, at the Common Law, liable to Executions at an Execution upon a Judgment for Debt or the Common Damages, unless in some special Cases, the Law. Execution was only of his Goods, Chattels, Grain or other present Profits growing on his Land, 3. R. 11. b. For this Purpose the Common Law gave two Writs only, as the *Levari facias*, by which the Sheriff was commanded *quod de terris & catallis ipsius A. &c. Levari faciat, &c.* and the *Fieri facias*, which was only *de bonis & catallis* 3 R. 12. a. The Law abhorred Force, and when committed, the Body of Ca. Sa. the Offender was subject to Imprisonment ; and it was a Rule, that in Actions *vi & armis* a *Capias* lay, and where a *Capias* lay in Process, a *Capias ad Satisfaciendum* lay after Judgment. 3 R. 12. a. but such Actions *vi & armis* must be intended where there was a direct and wilful Wrong, not where a Negligence only, as against an Host for Goods lost in his Inn. Hob. 56. Several Statutes have given a *Capias* in Process, and

and consequently a *Capias ad Satisfaciendum* after Judgment.

By the Stat. of *Marlbridge* 52 H. 3. c. 23. a *Capias* is given in Account. 2 *Inst.* 143. By the Stat. of *Westminster*, 2, 13 *Edw.* 1. c. 11. a *Capias* lies in Account and Outlawry thereon. 2 *Inst.* 978. By the Stat. of 25 *Edw.* 3. c. 17. a *Capias* is given in Debt and Detinue. By the Stat. 19 H. 7. c. 9. like Process is given in Case as in Debt and Trespass. By the Stat. of 23 H. 8. c. 14. like Process is given in a Writ of Annuity and Covenant as in Case.

Elegit.

By the Stat. of *Westminster* 2. c. 18. the *Elegit* was given, and by that Statute, when a Debt is recovered or acknowledged in the King's Court, or Damages awarded, it shall be in the Election of him that sues to have a Writ of *Fieri Facias*, that the Sheriff levy of the Lands or Goods, or that the Sheriff deliver to him all the Chattels of the Debtor saving his Oxen and Beasts of the Plough and one Half of his Lands, till the Debt be levied by a reasonable Price and Extent.

If the Chattels are sufficient, then the Sheriff ought not to extend the Land. 2 *Inst.* 395. The Appraisement and Extent must be by Inquisition. 2 *Inst.* 396. The Sheriff cannot sell Goods upon a *Elegit* without taking an Inquisition. *Or.* El. 584.

Hopkins having obtained a Judgment sued out an *Elegit*, and the Inquisition finding

inding the Defendant seized of a Me-^{When a bad}
 sage, and other Lands of such a Value, ^{Return of a}
 the Sheriff delivers a Moiety of the Me- ^{Writ of Elegit}
 sage, &c. in Execution, and the Plaintiff ^{may be quash-}
 moved to quash the Return, to the End ^{ed, without a}
 he might have a new Writ, for he could ^{Writ of Er-}
 not bring his Ejectment upon this Return, ^{ror.}
 because the Sheriff had not delivered the
 Moiety by Metes and Bounds, as he ought
 to have done. *Twisden* and *Wild* said,
 that after it is filed and entered upon the
 Roll, it cannot be quashed nor discharged
 but by Writ of Error, and so the Cause
 of the Discharge will be marked upon the
 Roll, and now the Plaintiff has excluded
 himself from any other Execution. But
Male said, that where the Cause ap-
 peared with the Record itself, it might be
 quashed without a Writ of Error; and
 where it appears, that the Sheriff has not
 delivered the Moiety in Severalty, as he
 ought; and if the Inquisition had found
 the Defendant seized of two Messuages,
 one of 20 *l. per Annum*, and the other of
 5 *l. per Annum*, and the Sheriff delivers
 one of them as the Moiety, and the Re-
 turn is filed and entered upon the Roll,
 yet it may be quashed without a Writ of
 Error; for it is apparent within the Re-
 turn, that the Sheriff has delivered either
 more or less than a Moiety. But if the
 Sheriff upon an *Elegit* delivers three Parts
 of four in Extent for a Moiety, and re-
 turns the Delivery of a Moiety, here this
 return cannot be quashed nor avoided, if
 once

once filed, for he cannot shew it as to take Advantage of it upon the Trial ; but the Party, in Case where more than a Moiety is delivered, must come before the Writ filed, and suggest Inequality, for else it shall be taken to be true, because by Inquisition, except the Misexecution appear within the Return itself, then it is void, and neither Party put to bring his Writ of Error, and the Plaintiff in such Case may take out a new Execution ; for this being void, is as if no Execution at all had been. But because *Twisden* and *Will* doubted, *Cur. advisar. Anonymus, Pas. 26 Car. 2.* and 3 *Keble* 313.

If upon an *Elegit* the Sheriff deliver the Moiety of a House without Metes and Bounds, the Return is ill, and shall be quashed for Incertainty ; but if the Sheriff upon an *Elegit* deliver more than a Moiety, the Return is not void, but voidable by Writ of Error or *Audita Querela. Carib. 453.*

If the Sheriff on an Inquisition upon an *Elegit* returns the Defendant to have 20 Acres in *Dale*, and 20 Acres in *Sale*, and delivers the 20 Acres in *Sale* for the Moiety of the Whole, all is void ; for he ought to deliver a Moiety of the 20 Acres in each Vill ; and this might be avoided in Evidence in Ejectment brought for the Lands. 1 *Lev.* 160.

No Notice of executing an *Elegit*. No Notice is given of the Execution of a Writ of *Elegit* as there must be of a Writ of Inquiry. *Trin. 30 Car. 2.*

in the Court of King's Bench. 253

If a *Fieri Facias* is sued out in the Life of the Defendant, who dies before the Return of the Writ, yet the Goods may be taken in Execution upon this Writ, by the Executor or Administrator, or neither, for the Goods were bound by the Execution. *Vid. Rolls 893. 3 Cro. 174, 81. Mo. 21. Cowper, v. Dawes, Hil. 20, 1 C. 2. C. B. sed vide Stirt v. Alder, Trin. 22 Car. 2.*

Judgment in B. R. *Fieri facias* into London, Return *Nulla bona, Testatum* into Montgomeryshire, the Sheriff returns *quod breve Regis non currit in Wallia nisi in Causa Regis*, or wherein the King is concerned. *Saunders* moved that the Sheriff might be amerced. Resolved *per Curiam*, that upon a Judgment in this Court Execution may be awarded into Wales, or a County Palatine. *Vide 2 Cro. 484. 1 Cro. 445.* that Lands in Wales pleadable here. *Hetley 8, 21. 2 Bulstr. 54, 156.* 2. If the Writ did not run there, yet the Sheriff being an Officer of this Court, ought not to question it, but to make return of the Execution of it; and the Sheriff was ordered, upon a Penalty, to return the Writ as he would stand by it; for it was resolved the Sheriffs in Wales ought to execute judicial Writs, and the Court hath done to write to there as in Countys Palatine, where they write to the Chancellor or Chamberlain, or Warden of the Cinque Ports. An *Elegit* may be executed in Wales, and why not a *Fi. Fa.*? If it could

could not, the Party would be without Remedy : For he cannot bring an Action there upon this Judgment, and he cannot outlaw the Defendant, because this is only a Bill of Debt against an Executor. *Dra- per v. Blaney*, Trin. 22 Car. 2. 1 Lev. 291. *Raym.* 206. 2 *Saund.* 193. 2 *Keb.* 649. 657, 724.

Of Execution
on a joint
Judgment a-
gainst several
Defendants.

Judgment against two ; one dies, the Plaintiff brings a *Sci. Fa.* against the Survivor and the Executor of the other Defendant ; the Survivor makes Default and the Executor demurs and has Judgment, because it was held that the personal Lien survived. *Hale*, Where a Judgment is against several, there the Lien survives ; for as the Land is not bound in respect of the Person, so in that Case the Party dying, his Lands are unbound. If Judgment against two or three, the Execution must be joint, and not against any one ; and if three be jointly and severally bound, the Party must sue either all or one, and can't sue two, because neither joint nor several : But where several become Bail, there one may be sued without naming the other, for they are severally bound. *Cary v. Ward*, Pas. 26 Car. 3 *Keb.* 298.

Where on a
Penalty being
levied, the
Court will or-
der the Plain-
tiff to take
only his princi-
pal Interest and
Costs.

Debt upon Bond, against the Principal, and after against the Bail, and the whole Penalty levied upon the Goods of the Bail, and the Money remaining in the Sheriff's Hands ; they move, that the Plaintiff may accept his Principal, Interest and Charges, and return the rest. *T.*

Court said the Defendants came very late, for they never used to make such a Rule after Execution executed, yet being in Case of the Bail, and the Money remaining in the Sheriff's Hands, it was granted; but if the Sheriff had paid the Money over to the Plaintiff, they would not help the Defendant. *Anonymous, Mich. 30*

Cur. 2.

Husband and Wife taken in Execution, *Escape of the* the Gaoler let the Husband escape; Court *Husband the* resolved, that unless the Plaintiff would *Escape of the* take the Husband again, *as he might do, Wife:* they would discharge the Wife, and said, the Escape of the Husband was the Escape of the Wife. *1 Ventris 51.*

Motion to have Restitution of Goods *Execution may* seized by *Fi. Fa.* out of this Court in the *issue out of this* County Palatine of *Chester*, denied *per Cur. Court into a* and held, that Executions may well issue *County Pala-* out of this Court to the County Palatine *tine.* in a Judgment originally given in this Court. *1 Lev. 256.*

Per Holt, If a *Fi. Fa.* is delivered to the *Where two* Sheriff To-day, and another To-morrow, *Writs of Exe-* and the Sheriff executes the last first by *cution are de-* making a Bill of Sale of the Goods, such *livered to the* shall stand good, and the Vendee shall *Sheriff, he* hold the Goods against him who first deli- *must give Pre-* vered the Writ to the Sheriff, and his Reme- *ference to that* dy is only by Action against the Sheriff. *which was* *first delivered.*

But if the Writs of Execution are delivered to the Sheriff the same Day, he hath not Election which to execute first, but is bound to give Preference to that which was first delivered; but if in Fact he execute that

that first which was last delivered, and make Sale of the Goods, the Vendee hath a good Title to them, which cannot be defeated by a subsequent Execution of that Writ which was first delivered. But the Party concerned in such Writ is put to his Action against the Sheriff. *Carth. 419. v. Stat. of Frauds 29 C. 2. c. 3.*

Execution against an Agreement set aside.

Twisden, I have known where if a Judgment was given, and there was an Agreement between the Partys not to take out an Execution till the next Term, and they did it before, that the Court set all aside. *1 Mod. 20.*

Execution after Judgment signed, but before it is entered.

The Plaintiff may have Execution presently after Judgment is signed, and before it is entered; for otherwise he should be at great Delay; for the Course of the Court is not to enter the Judgment till the Vacation after, and the Defendant is not at any Mischief; for he may have a Writ of Error after the Signing, and before the Judgment entered. *M. 15 Jac. Smith and Bowles. 1 Roll. Abr. 899. Vide 2 Show. 494. 3 Danv. 329. pl. 1.*

Body of a Peer when liable to an Execution.

Upon an Execution upon a Stat. Staple Merchant, upon Stat. of *Acton Burnel*, 23 H. 8. the Body of a Peer may be taken in Execution. *2 Leon. 173. 3 Danv. 327. 2.*

A Ca. Sa. in Debt.

Ca. Sa. in Debt.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland

King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting : We command you that you take C. D. [if there be an Alias dict', put it in] if he shall be found in your Bailiwick, and safely keep him, so that you may have his Body before Us at *Westminster*, on

next after _____ to satisfy A. B. of one hundred Pounds of Debt, which the said A. B. lately in our Court before Us at *Westminster* recovered against him ; as also of sixty-three Shillings which in our said Court before Us at *Westminster*, were adjudged to the said A. B. for his Damages which he sustained as well by Occasion of the detaining the said Debt, as for his Costs and Charges by him about his Suit in that Behalf expended ; whereof the said C. D. is convicted, as appears to us of Record ; And have there then this Writ. Witness Sir William Lee, Knight, at *Westminster*, the _____ Day of _____

Year of our Reign.

Anthony and Bigge.

If in Case upon Promise, say, To satisfy In Case. A. B. of one hundred Pounds, which the said A. B. lately in our Court before Us at *Westminster* recovered against the said C. D. for his Damages which he sustained as well by Occasion of the not performing certain Promises and Undertakings lately made by the said C. D. to the said A. B. as for his Costs and Charges, &c.

A Testatum Ca. Sa.

Testatum

Ca. sa. in Debt.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: Whereas we lately commanded our Sheriff of Middlesex, that he should take C. D. if he could be found in his Bailiwick, and safely keep him, so that he might have his Body before Us at Westminster, at a certain Day now past, to satisfy A. B. of five hundred Pounds of Debt which the said A. B. lately in our Court before Us at Westminster had recovered against him, and also of sixty-three Shillings which lately in our said Court before Us at Westminster had been adjudged to the said A. B. for his Damages which he had sustained as well by Occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said C. D. is convicted, as appears to Us on Record; and our said Sheriff of Middlesex at that Day returned to Us, that the said C. D. was not found in his Bailiwick; whereupon, on the Behalf of the said A. B. it was sufficiently attested in our said Court before Us, that the said C. D. doth lurk and secrete himself in your County; We therefore command you, that you take him, if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before Us at Westminster,

minster, on next after to
satisfy the said *A. B.* of the Debt and Da-
mages aforesaid ; And have there then, &c.

GEORGE the Second, by the Grace Ca. Sa. by
of God, of *Great Britain, France and Ire-* surviving Ex-
land King, Defender of the Faith, &c. To ecutors against
the Sheriff of *Middlesex*, Greeting. Whereas an Executor
by our Writ we lately commanded you, after Nulla
that of the Goods and Chattels, which were bona returned
of *Lewis R.* Gentleman, deceased, lately on a Fi. Fa.
called *L. R.* of, &c. at the Time of his De-
cease, in the Hands of *Rebecca R.* Widow,
Executrix of the Testament and last Will
of the said *L. R.* in your Bailiwick, you
should cause to be made two hundred
Pounds of Debt, which *Thomas W. Philip*
S. and *Robert R.* surviving Executors of
the Testament and last Will of *Gabriel*
Chalcorines, Gentleman, deceased, lately in
our Court before us at *Westminster*, had re-
covered against the said *Rebecca* ; as also
sixty-three Shillings, which in our said Court
before us had been adjudged to the said
T. W. P. S. and *R. R.* for their Damages
which they had sustained, as well on Oc-
casion of the detaining that Debt, as for
their Costs and Charges by them about their
suit in that Behalf expended, whereof she
was convicted, as appeared to us of Re-
cord, if she had so much in her Hands to
be administered ; and if she had not so much
in her Hands to be administered, then the
said Damages of the proper Goods and Cha-
tels of the said *Rebecca* ; and whereupon in *Post Sci. Fa.*

our said Court before us, it was considered, that the said *T. W. P. S.* and *R. R.* the surviving Executors of the said *G. C.* should have their Execution against the said *R.* of the Debt and Damages aforesaid to be levied of the Goods and Chattels which were of the said *L. R.* in the Hands of the said *R.* to be administered, if she had then so much in her Hands to be administered; and if she had not then so much in her Hands, then the said Damages to be levied of the proper Goods and Chattels of the said *R.* and that you should have that Money before us at *Westminster* on *Wednesday* next after five Weeks of *Easter*, to render to the said *T. W. P. S.* and *R. R.* for their Debt and Damages aforesaid; and you the said Sheriff of *Middlesex* at that Day returned to us, that the said *R.* had no Goods or Chattels in your Bailiwick, which were of the said *L. R.* at the Time of his Death in her Hands to be administered, whereof you could cause to be made the said Debt or Damages, or any Part thereof, nor had the said *R.* any of her own proper Goods and Chattels in your Bailiwick, whereof you could cause to be made the said Damages or any Part thereof, according to the Demand of that Writ: And whereas thereupon in our said Court before us, there were afterwards such Proceedings, that by our said Court before us it was considered, that the said *T. W. P. S.* *R. R.* the surviving Executors of the said *G. C.* should have Execution against the said *R.* of the said two hundred

hundred Pounds of Debt, and also of the said sixty-three Shillings for the Damages, Costs and Charges aforesaid, to be levied of the proper Goods and Chattels of the said R. And it was further considered by your said Court before us, that the said *T. W. P. S.* and *R. R.* should recover against the said R. twenty and eight Pounds for their Costs and Charges by them about their Suit by Occasion of the prosecuting your Writ of *Scire facias* in that Behalf expended, adjudged by your said Court before us, to the said *T. W. P. S.* and *R. R.* at their Request, according to the Form of the Statute in such Case lately made and provided: We therefore command you, that you take the said R. if she may be found in your Bailiwick, and keep her safely, so that you may have her Body before us at *Westminster*, on next after to satisfy the said *T. W. P. S.* and *R. R.* of the said two hundred Pounds of Debt, and of the said sixty three Shillings of Damages, and also of the said twenty and eight Pounds for the Costs and Charges aforesaid, adjudged to the said *T. W. P. S.* and *R. R.* as aforesaid, according to the Form of the said Statute; And have there then this Writ. Witness, &c.

GEORGE the Second, by the Grace Ca. Sa. a-
 of God, of Great Britain, France and Ire- gainst an Ad-
 King, Defender of the Faith, &c. To ministratrix
 the Sheriffs of London, Greeting: We com- upon a Non
 and you that you take *Jane Tudor Admi-* Profs.
nistratrix

nistratrix of all and singular the Goods and Chattels which were of *Thomas Tudor* at the Time of his Death, who died intestate, as it is said, if she may be found in your Bailiwick, and safely keep her, so that you may have her Body before us at *Westminster*, on next after to satisfy *James*

Comber of which in our Court before us, according to the Form of the Statute in such Case lately made and provided, were adjudged to the said *James* for his Costs and Charges by him sustained about his Defence in a certain Action of a Plea of at the Suit of the said *Jane*, because the said *Jane* did not afterwards further prosecute that Action, and whereon she is convicted, as appears to us of Record. And have there then this Writ. Witness, &c.

Ca. Sa. upon
a Non Profs.
for want of a
Declaration.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: We command you that you take *Sarah Wheeler* Widow, if she shall be found in your Bailiwick, and safely keep her, so that you may have her Body before us at *Westminster*, on next after to satisfy *Robert Parry* of which in our said Court before us at *Westminster* were adjudged to the said *Robert*, according to the Form of the Statute in that Case lately made and provided, for his Costs and Charges by him sustained about his Defence, in appearing to our certain Writ of *Latitat* prosecuted against the said *Robert*, at the Suit

of the said *Sarah*; and whereupon the said *Sarah* did not afterwards further prosecute that Writ, as appears to us of Record; And have there then this Writ. Witness, &c.

GEORGE the Second, &c. To the Sheriff of *Suffex*, Greeting: Whereas by our Writ we lately commanded *N. P. Esq*; late Sheriff of your County, that of the Goods and Chattels of *John Jones*, otherwise called *John Jones* of, &c. in his Bailiwick, he should cause to be made one hundred Pounds of Debt, which *William Maddox* lately in our Court before us at *Westminster* recovered against him, and also sixty-three Shillings, which in our said Court before us were adjudged to the said *William Maddox* for his Damages which he had sustained, as well by Occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *John Jones* was convicted, as appeared to us of Record; and that he should have that Money before us at *Westminster*, on next after last past, to render to the said *William Maddox* for the Debt and Damages aforesaid; and our said late Sheriff of your County at that Day returned to us, that he by virtue of the said Writ to him directed had caused to be made of the Goods and Chattels of the said *John Jones* thirty Pounds Parcel of the Debt and Damages aforesaid; which said Money he had caused to be paid to the said *William Maddox* in Part of the said Debt and Damages:

Testat. Ca.
Sa. after Par-
cel levied by
Fi. Fa.

And the said Sheriff further certified, that the said *John Jones* had no more or other Goods in his Bailiwick, whereof he could cause to be made the Residue of the said Debt and Damages, or any Part thereof; and whereas by our Writ we lately commanded our Sheriffs of *London*, that they should take the said *J. J.* if he should be found in their Bailiwick, and safely keep him, so that they might have his Body before us at *Westminster*, on next after to satisfy the said *W. M.* of seventy-three Pounds and three Shillings, the Residue of the said Debt and Damages in Form aforesaid recovered; and our said Sheriffs of *London* at that Day returned to us, that the said *J. J.* was not found in their Bailiwick; upon which on the Behalf of the said *W. M.* it is sufficiently certified in our Court before us, that the said *J. J.* lurks and secretes himself in your County; we therefore command you, that you take the said *J. J.* if he may be found in your Bailiwick, and safely keep him, so that you may have his Body before us at *Westminster*, on next after to satisfy the said *W. M.* of the said seventy-three Pounds and three Shillings, the Residue of the Debt and Damages aforesaid; And have there then this Writ. Witness, &c.

A Fi. Fa. in Case.

Fi. Fa. in case on Promise. *GEORGE* the Second, by the Grace of God, of Great Britain, France and Ire-

And King, Defender of the Faith, &c. To the Sheriff of *Lincoln* Greeting: We command you, that of the Goods and Chattels of *C. D.* in your Bailiwick you cause to be made one hundred Pounds, which *A. B.* lately in our Court before us at *Westminster* recovered against the said *C. D.* for his Damages which he sustained, as well by Means of the not performing certain Promises and Undertakings lately made by the said *C. D.* to the said *A. B.* as for his Costs and Charges by him about Suit in that Behalf expended; whereof *C. D.* is convicted, as appears to us of Record, and that you have that Money before us at *Westminster*, on _____ next after _____ to render to the said *A. B.* for his Damages aforesaid; And have there then, &c.

If in Covenant, say, Which he sustained *Covenant.* as well by Means of the breaking a certain Covenant lately made between the said *C.* and the said *A.* as for his Costs and Charges, &c.

If you make out a *Ca. Sa.* or a *Fi. Fa.* *If after Sci. Fa.* after a *Sci. Fa.* has issued, after the Words "as it appears to us of Record" add, And whereupon in our said Court before us at *Westminster*, it is considered, That the said *A. B.* have his Execution against the said *C. D.* of the Damages aforesaid, [or Debt and Damages aforesaid, as the Action is] by the Default of the said *C.* And have there then, &c.

GEORGE

Fi. Fa. for an
Executor on a
Judgment re-
covered by the
Testator.

Sci. Fa.

G E O R G E the Second, &c. To the
Sheriffs of *London* Greeting: We command
you, that of the Goods and Chattels of *Edward Wahnesley*, Gentleman, in your Bailiwick, you cause to be made two hundred Pounds of Debt, which *Thomas Hassel*, Esq; now deceased, in his Life-time, lately in our Court before us at *Westminster* has recovered against him, and also sixty-three Shillings, which in our said Court before us were adjudged to the said *Thomas* for his Damages which he has sustained, as well by occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *Edward* is convicted, as appears to us of Record; and whereupon in our said Court before us, it is considered, that *William Hassel*, Esq; Executor of the Testament and last Will of the said *Thomas*, have his Execution against the said *Edward* of the Debt and Damages aforesaid, according to the Force, Form and Effect of the said Recovery; And have that Money before us at *Westminster*, on next after to render to the said *William* for the Debt and Damages aforesaid; And have there then this Writ. Witness, &c.

Fi. Fa. for an
Executor a-
gainst an Ad-
ministrators de
bonis non.

G E O R G E the Second, &c. To the
Sheriff of *Kent* Greeting: We command
you, that of the Goods and Chattels in your Bailiwick which were of *Francis Howes*, Esq; deceased, otherwise called *Francis Howes*

Howe of, &c. at the Time of his Death in the Hands of *Thomas Howe*, Esq; Administrator of all and singular the Goods and Chattels, Rights and Credits, which were of the said *Francis Howe* at the Time of his Death to be administered by *William Howe* and *John Howe*, deceased, late Executors of the Testament and last Will of the said *Francis Howe*, in the Life-time of the said *William Howe* and *John Howe* unadministered, you cause to be made four hundred Pounds of Debt, which *James Comber*, Esq; and *Frances* his Wife, lately in our Court before us at *Westminster*, recovered against the said *William Howe*, after the Death of the said *John Howe*; and also five Pounds, which in our said Court before us were adjudged to the said *James* and *Frances* for their Damages which they had sustained, as well by occasion of the detaining that Debt, as for their Costs and Charges by them about their Suit in that Behalf expended, to be levied of the Goods and Chattels which were of the said *Francis Howe* at the Time of his Death in the Hands of the said *William Howe* to be administered, if he had so much in his Hands; and if he had not so much in his Hands, then the said Damages to be levied of the proper Goods and Chattels of the said *William Howe*, whereof he was convicted, as appeared to us of Record; and whereupon Sci. Fa. in our said Court before us, it is considered, that the said *James Comber* and *Frances* have their Execution against the said *Thomas Howe*

Howe of the Debt and Damages to be levied of the Goods and Chattels of the said *Francis Howe* at the Time of his Death in the Hands of the said *William Howe* to be administered, according to the Force, Form and Effect of the said Recovery ; And have that Money before us at *Westminster*, on next after to render to the said *James Comber* and *Frances* for the Debt and Damages aforesaid ; And have there then this Writ. Witness, &c.

An Elegit.

Elegit.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To the Sheriffs of, &c. Greeting : Whereas *A. B.* lately in our Court before us at *Westminster*, by Bill without our Writ, and by the Judgment of the same Court, recovered against *C. D.* 100 *l.* of Debt, and also 40 *s.* for his Damages, which he sustained as well by Means of the detaining the said Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *C. D.* was convicted, as appears to us of Record ; and afterwards the said *A. B.* came in our Court before us, and chose to be delivered to him all the Goods and Chattels of the said *C. D.* except the Oxen and Beasts of his Plow, and also a Moiety of all and singular the Lands and Tenements of the said *C. D.* in your Bailiwick, to hold to him the said Goods and Chattels as his own

own proper Goods and Chattels, and also to hold the said Moiety to him and his Assigns as his free Tenement, according to the Form of the Statute in that Case made and provided, until the said Debt and Damages should be thereof fully levied: We therefore command you, that without Delay you cause all the Goods and Chattels of the said C. D. in your Bailiwick, except the Oxen and Beasts of his Plow, and also a Moiety of all the Lands and Tenements of the said C. D. in your Bailiwick, whereof the said C. D. on the Day of

on which Day the said Judgment was given, or at any time afterwards was seized, to be delivered to the said A. B. by a reasonable Price and Extent; to hold to him the said Goods and Chattels as his own proper Goods and Chattels, and also to hold the Moiety of the said Lands and Tenements as his free Tenement, to him and his Assigns, according to the Form of the said Statute, until the said Debt and Damages shall be thereof fully levied; and that you make appear to us at *Westminster*, on

next after under your Seal and the Seals of them by whose Oath you shall make the said Extent and Appraisement, in what Manner you shall have executed this our Writ; And have there then this Writ. Witness, &c.

GEORGE the Second, by the Grace ^{Elegit against} of God, of Great Britain, France and Ire-^{Tertenants.} land King, Defender of the Faith, &c. To the

Sci. fa.

the Sheriff of *Essex* Greeting : Whereas *R. R. Esq;* lately in our Court before us at *Westminster* by Bill without our Writ, and by the Judgment of the same Court, recovered against *W. S. Gentleman*, otherwise called, &c. one thousand Pounds of Debt, and also fifteen Pounds for his Damages which he has sustained, as well by occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *W. S.* is convicted, as appears to us of Record; and whereupon in our same Court before us, it is considered, that the said *R. R.* have his Execution against *J. W. C. B.* and *E. G.* Tenants of one Mesuage, five Barns, and two Stables, one Garden, one Orchard, twenty Acres of Land, and twenty Acres of Meadow, fifty Acres of Pasture, and ten Acres of Wood, with the Appurtenances, situate, lying and being in the Parish of *Westham* in your County, which were the Lands and Tenements of the said *W. S.* deceased, (of which the said *W. S.* on the Day of giving the said Judgment, and afterwards was seised in his Demesne as of Fee) of the Debt and Damages aforesaid to be levied of those Lands and Tenements; And afterwards the said *R. R.* came in our said Court before us, and according to the Form of the Statute in such Case made and provided, chose a Moiety of the said Lands and Tenements to be delivered to him by a reasonable Price and Extent, to hold to him and his Assigns as his free Tenement,

according

According to the Form of the said Statute, until the said Debt and Damages shall be thereof fully levied: We therefore command you, that without Delay you cause a Moiety of all the said Lands and Tenements to be delivered to the said R. R. by a reasonable Price and Extent, to hold to him and his Assigns as his free Tenement, according to the Form of the said Statute, until the said Debt and Damages shall be thereof fully levied; And in what manner you shall execute this our Precept, make appear to us at *Westminster*, on the next after remitting to us this our Writ. Witness, &c.

Forset, **A**N Inquisition indented taken at *A Return to*
to wit. **B.** in the County aforesaid, on *an Elegit.*

the Day, &c. before me C. D. Esq;
 Sheriff of the County aforesaid, by virtue of a Writ of our Lord the King to me directed, and to this Inquisition annexed by the Oaths of [naming the 12 Jurors] good and lawful Men of my Bailiwick, who upon their Oath say, that *E. F.* named in the said Writ on the Day of giving the Judgment mentioned in the said Writ, *to wit,* on the Day, &c. and on the Day taking this Inquisition was seised in his demesne as of Fee of and in one Mesuage, Acres of Land, Acres of Meadow, Acres of Pasture, Acres of Wood, and Acres of Furze and Heath, with the Appurtenances called within the Parish of *H.* in the County aforesaid.

aforesaid, now or late in the Possession of the said *E. F.* or of his Assigns, of the clear yearly Value in all Issues above Reprises of forty Pounds, and of and in one other Mesuage, Acres of Land, Acres of Meadow, Acres of Pasture, Acres of Wood, and Acres of Furze and Heath, with the Appurtenances called *K.* within the said Parishes of *H.* in the County aforesaid, now or late in the Tenure of *L. M.* or of his Assigns, of the clear yearly Value in all Issues above Reprises of ten Pounds, and that one of the said two Mesuages first above mentioned, and Acres of Land, Acres of Meadow, Acres of Pasture, Acres of Wood, and Acres of Furze and Heath, called *G.* being of the yearly Value of are one Moiety of the said Tenements; which Moiety of the said Tenements I the said Sheriff, on the Day of taking this Inquisition, have caused to be delivered to *N. O.* in the said Writ named, by the Price and Extent aforesaid, to hold as his free Tenement to him and his Assigns, according to the Form of the Statute in that Case made and provided until the Debt and Damages in the said Writ mentioned shall be thereof fully levied; and the said Jurors upon their Oath further say that the said *E. F.* has no Goods or Chattels, nor has nor had at the Time of giving the said Judgment, nor at any time afterwards ever had any other Lands or Tenements in the said County to the Knowledge

of the said Jurors. In Testimony whereof, as well I the said Sheriff as the said Jurors have to this Inquisition alternately put our seals, on the Day and Year and at the Place foresaid.

C. D. Esq; Sheriff.

The *Ca. Sa.* and *Fi. Fa.* are only sealed, for which you pay 7 *d.* but the *Elegit* is both signed and sealed; you pay 1 *s.* 8 *d.* to the Chief Clerk for signing it, and 7 *d.* to the sealer for sealing it.

Proceedings by Original.

THIS antient Method of Proceeding, ^{Use of proceed-}
tho' now much out of Use is still very ^{ing by Original.}
necessary in many Cases.

As for Example in Proceeding in this *Against Peers,*
Court against Peers, who by the Law of ^{who cannot be}
the Land are not to be arrested in any ^{sued by Bill,}
civil Cause whatsoever; and therefore not ^{because thereby}
to be proceeded against by Bill, because in Custodia ^{supposed to be}
herein supposed to be *in Custodia Mares-* Marescalli.
alli. Sed quære.

And against Corporate Bodies, as Mayor *And Bodies*
and Aldermen, Dean and Chapter, Master *Corporate.*
and Fellows, &c. and Hundredors on the
statute of Hue and Cry.

No *Quære Impedit*, Writ of Right, Re- *Several Ac-*
plein and such like, come into this Court, *tions in this*
either by Original Writ, or else by be- *Court, only by*
removed from inferior Courts by Writs *Original Writ.*
which are in their Nature Original Writs,

and returnable *coram nobis ubicunque*, &c. as Writs of *Recordari facias Loquelam*, *Acedas ad Curiam*, *Certiorari*, Writs of Error &c.

No Writ of Error on Judgment by Original but in Parliament.

It is a much more expeditious Way of procuring the Suitor his Right than by Bill for no Writ of Error lieth on a Judgment obtained by Original Writ, but what may be made returnable in the High Court of Parliament, and that purchased and carried on at a very dear Rate, and commonly attended with exemplary Costs in Favor of the Defendant in Error, if the Judgment be affirmed; whereas, if the Judgment be on an Action brought by Bill, a Writ of Error may be brought returnable in the *Exchequer* Chamber, and from thence, after four Terms Attendance, a Writ of Error may be brought returnable in the House of Lords.

Its Use in Outlawing Defendants that conceal themselves.

It is also of excellent Use in Outlawing Debtors who are difficult to be arrested and lie concealed in Holes and Corners, spending their Creditors Substance.

No Surrender in Discharge of Bail on Outlawry.

And note, That if the Defendant be arrested on the *Capias utlegatum*, and Bail put in, the Defendant cannot discharge his Bail by surrendering himself to Prison, but he must pay the Condemnation-Money, and they for him.

Cannot proceed by Original in Debt, Detinue, Account or Covenant.

It is said, That no Original Writ may be made returnable in this Court in any Action of Debt, Detinue, Account or Covenant *sed quere*. Vide *Carth.* 234.

in the Court of King's Bench. 275

The Original Writ which is issued out of ^{Original Writ} the High Court of *Chancery*, and made out ^{a Warrant for} by the Curfitor of the proper County, is ^{the Capias.} not at this Day in general Cases served on the Defendant, except it be against a Peer or a Body Corporate, it being only a Foundation or Warrant for the *Capias*, on which the Defendant may be arrested, and the Plaintiff have Bail for his Debt.

In order thereto, the Plaintiff's Attor- ^{Method of} ^{Proceeding.} ^{2 H. 5. c. 5.} *Præcipe*, which is to con- in the whole Count or Declaration, in which you, by the Statute of Additions, must set forth the Defendant's Estate or Degree, or Mystery, and the Town or Hamlet, or Place and County, where he or was conversant.

Præcipe.

Middlesex. If *A. B.* shall give you Security to prosecute his Suit, then put by Sureties and safe Pledges *C. D.* late of *Wesimin-* in the County of *Middlesex*, Joyner, *nat, &c.* To shew, that whereas [here set forth the whole Declaration *verbatim*, till you come to] to the Damage of the said *B.* of 36 *l.* as he says.

Robert Richard-
son, Attorney,
8 May 1738.

Returnable before
our Lord the King,
on the Morrow of
the *Holy Trinity*,
wheresoever, &c.

Affidavit for 20 *l.*

T 2

You

Fees on Original and Capias.

You carry the *Præcipe* to the Filacer, who will make out the *Capias* and procure the Original and Return, and file it for you; you pay the Filacer 2 s. 6 d. for the first Count of the *Capias*, and 6 d. for every other Count, and the like for the Original which he pays over to the Cursitor, besides 4 d. for filing the Original, making together 5 s. 4 d. for the first Count, and 1 s. for every subsequent Count. You carry the *Capias* to be sealed, for which you pay 7 d. and then to the Sheriff for a Warrant, for which you pay 2 s. 4 d.

You must be cautious that the Teste of the Original, (which must be at least fifteen Days before the Teste of the *Capias*) be subsequent to your Cause of Action.

Fines on Originals.

You pay on Original Writs, where the Damages laid exceed 40 l. Fines to the King in the following Proportions.

	<i>l.</i>	<i>s.</i>
From 40 l. to 100 Marks.	0	6
From 100 Marks to 100 l.	0	10
From 100 l. to 200 Marks.	0	13
From 133 l. 6 s. 8 d. to 166 l. 13 s. 4 d.	0	16
From 166 l. 13 s. 4 d. to 200 l.	1	0
And for every 100 Marks more	0	6
And for every 100 l. more	0	10

The Return of the Original, the Teste of the Capias, &c.

If the Defendant cannot be arrested the *Capias*, you may have an *Alias*, after that a *Pluries*. And note, That the Return of the Original is the Teste of the *Capias*, the Return of the *Capias* the Teste of the Original.

of the *Alias*, and the Return of the *Alias* the Teste of the *Pluries*; and so on, unless the Return of any of them happen on the *Essoin* Day before any Term, and then the next Writ must bear Teste the first Day of that Term, for it cannot bear Teste out of Term: But I think that regularly the *Capias*, *Fifteen Days* *Alias*, *Pluries* and *Exigent*, ought respectively between Teste and Return on Originals. to bear Teste on the *Quarto die post* of the Return of the precedent Writ; the contrary is practised merely for the sake of Expedition in the Outlawry, as appears in *Try's Jus Filizarii*, fo. 184 to fo. 191, where the Practice is both ways: The Original, and all subsequent Writs grounded thereupon, must have 15 Days between the Teste and Return of each, except in the Cases provided for by Statutes of the 13 and 16 Car. 2. before taken Notice of. *Vide antea* fo. 66, 67. As you may have occasion for the sake of Expedition to make out these Writs yourself, though it is the Filacers Duty to make them out, I shall give the following Precedents.

GEORGE the Second, by the Grace *Capias*.
of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex* Greeting: We command you that you take *Archibald Scot*, late of the Parish of *St. Martin in the Fields* in your County, Surgeon, if he be found in your Bailiwick, and safely keep him, so that you may have him before us from the Day of *St. Michael* in three Weeks, where-

soever we shall be then in *England*, to answer to *Thomas Devenish* of a Plea, That whereas the said *Archibald* on the

Day, &c. [as in the Declaration to] to the Damage of the said *Thomas* of 30*l.* as is said; And have there then this Writ. Witness, &c.

Vaughan.

Alias Capias. In the *Alias Capias* after the Words *We command you*, say, *As we have heretofore commanded you.*

Pluries. In the *Pluries Capias* after the Words *We command you*, say, *As we have oftentimes commanded you.*

Common Appearance. If the Action requires only a Common Appearance, you enter it with the Filacer,

Special Bail. and pay him 2*s.* for it, out of which 1*s.* is for the Duty. If it requires Special Bail, you carry the Filacer a Note of the Names of the Bail, with their Places of Abode and Additions, and he will attend with you before a Judge to put in Bail, of which Notice is to be given to the Plaintiff's Attorney in Writing, and you must observe the Directions before given as to excepting against and adding and justifying the Bail, on which Occasion the Filacer must attend with his Book in Court. You pay on putting in Bail 16*s.* 6*d.* viz. Filacer 12*s.* 6*d.* Duty 2*s.* Judge's Clerk 2*s.*

Method of declaring. The Method of declaring by Bill is different from that by Original, which begins thus; vide *Carth.* 108.

Michaelmas

Michaelmas Term in the Twelfth Year
of King George the Second.

Middlesex. C. D. late of Westminster in the County of Middlesex, Joyner, was attached

Declaration by
Original.

to answer *A. B.* in a Plea of Trespass on the Case [as the Action is] and whereupon he said *A. B.* by *R. R.* his Attorney complains, That whereas [then go on with your Declaration as by Bill] to the Damages of the said *A. B.* of 20*l.* And thereupon he brings Suit, &c.

And omit the *Pleg. de Prosequend'* used No *Pleg. de*
at the End of the Declaration on Proceed-Prof.
ings by Bill.

You give a Rule with the Clerk of the Rules for the Defendant to plead, as to which the Directions before given will serve.

In making up the Issue you begin with the Declaration, and not with a Memorandum, as you do when the Proceedings are by Bill; and at the End of the Issue award

Of making up
the Issue.

the *Venire* thus: Therefore it is commanded to the Sheriff, that he cause to come before our Lord the King, from the Day

Award of the
Venire.

of the Holy Trinity in three Weeks [the Return of the *Venire*] wheresoever he shall then be in *England*, Twelve, &c. by whom &c. and who neither, &c. to take Cognizance, &c. because as well, &c. The same Day is given to the Parties aforesaid, &c.

In making up the *Nisi Prius* Record, the *Jurata* is thus:

Middlesex. The Jury between *A. B.* by his Attorney, Plaintiff, and *C. D.* late of

The Jurata b
Original.

Et. of a Plea of Trespass on the Case, is respited before our Lord the King, until from the Day of St. *Michael* in three Weeks, wheresoever, Et. unless [as before by Bill to] The same Day is given to the Parties aforesaid, Et.

Venirefacias
on Original.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, Et. To the Sheriff of Greeting: We command you, that you cause to come before us from the Day of wheresoever we shall then be in *England*, Twelve free and lawful Men of the Body of your County, each of whom has at the least ten Pounds by the Year of Lands, Tenements or Rents, by whom the Truth of the Matter may be the better known, and who are in no wise of Kin either to *A. B.* Gentleman, the Plaintiff, or to *C. D.* late of, Et. to make a certain Jury between the Parties aforesaid, in a Plea of Trespass on the Case, because as well the said *C. D.* as the said *A. B.* between whom the Contention thereupon is, have put themselves upon that Jury: And have there the Names of the Jurors, and this Writ. Witness, Et.

Distringas
Jur.

GEORGE the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, Et. To the Sheriff of Greeting: We command you, that you distrain the several Persons named in the Panel annexed to this Writ, being the Jurors summoned in our Court before Us, between *A. B.*
— Gen

Gentleman, Plaintiff, and C. D. late of, &c. by all their Lands and Chattels in your Bailiwick, so that neither they, nor any one by them, lay their Hands upon them, until you shall have another Precept thereupon from Us, and that you answer to Us of the Issues thereof, so that you may have their Bodys before Us on the wheresoever we shall then be in *England*, or before, [as in a *Distringas* by Bill,] to make a certain Jury between the Partys aforesaid, in a Plea of Trespass on the Case; and to hear their Judgments thereupon of many Defaults: And have there the Names of the Jurors and this Writ. Witness, &c.

George the Second, by the Grace of Subpœna, God, of *Great Britain, France and Ireland* King, Defender of the Faith, &c. To E. F. G. H. I. K. and L. M. Greeting: We command you, that notwithstanding all and singular your Businessses and Excuses whatsoever, you be in your proper Persons before Us, [as in Proceedings by Bill,] to testify all and singular those Things which you know in a certain Action now pending undetermined in our Court before Us, between A. B. Plaintiff, and C. D. late of, &c. in a Plea of Trespass on the Case. And this you are in no wise to omit, under the Penalty of one hundred Pounds. Witness, &c.

Note; In these and all other Writs by Original, in the Conclusion before the Este, you leave out the Word [then] saying,

saying, "And have there this Writ Witness, &c. and not "there then", &c. the Place of the Return being *ubicunque*, &c. and therefore uncertain.

Want of Original helpt after Verdict.

Trespas and Ejectment by original, Motion in Arrest of Judgment, upon a Fault in the Original, for a bad Original is not helped by Verdict : But the Master certifying there was no Original at all, the Plaintiff had Judgment, though in his Declaration he recited the Original. 1. *Mod.* 3.

As to the rest you proceed to Trial as by Bill.

If you have a Judgment by Default, and Occasion to make out a Writ of Inquiry, you begin thus :

Writ of Inquiry.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting : Whereas C. D. late of *Westminster* in your County, Joiner, was attached to be in our Court before Us, to answer A. B. of a Plea, wherefore whereas [the Declaration, &c. as in other Writs of Inquiry, to] to the Damage of the said A. B. of twenty Pounds as he said, &c. And it was in such Manner proceeded in our said Court, that the said A. B. ought to recover against the said C. D. his Damages by Occasion of the said Trespas on the Case : But because it is unknown to our Court before Us what Damages the said A. B. has sustained by Occasion of the Premises ; We therefore command you, that by the Oath

Twelve good and lawful Men of your Bailiwick you diligently inquire what Damages the said *A. B.* has sustained, as well by Occasion of the Premises, as for his Costs and Charges by him about his Suit in that Behalf expended, and that the Inquisition which you shall thereupon take, you send to us from the Day, &c. [the Return] wheresoever we shall then be in England, under your Seal and the Seals of them by whose Oath you shall take that Inquisition, together with this Writ. Witnesses, &c.

In Case the Defendant does not live in the County you intend to try your Action, ^{Testatum} *Capias*. you must have a *Testatum Capias* to arrest the Defendant in the County wherein he lives, grounded upon a *Capias* issued in the County wherein you intend to try your Action.

If the Defendant is not to be arrested ^{Outlawry} in the *Capias*, *Alias* or *Pluries*, the Filacer will make you out an Exigent and Proclamation; and if the Defendant does not appear on the Return of the Exigent, and which he may by a common Appearance only, though your Action be for 10,000 *l.* the Filacer will make out a *Capias Utlegatum* either General or Special; the General *Capias Utlegatum* is to take the Body only, the Special *Capias Utlegatum* is to extend the Defendant's Goods and Chattels, Lands and Tenements, and to take his Body also: And if the Defendant be arrested

V. Gouls. arrested on the *Capias Utlegatum*, he must
 179. 4 Leon. give Bail as before to answer the Condem-
 41. Yel. 28. nation.
 March 4.
 Cro. Car. 537, 538. 1 Jones 430. Cro. El. 908. Moor 668.
 pl. 917. 3 Danvers 302. Stat. 3 Eliz. c. 3. § 3.

Bail got of a
 Foreigner who
 had never been
 in England
 by outlawing
 him.

Erbo, a foreign Merchant, who had never been in England, was outlawed in an Action *Sur Assumpsit*, for Goods sold and delivered, and a Ship and other Effects were seized on a Special *Capias Utlegatum*: The Court refused to vacate the Outlawry on Motion, and Affidavit that the Defendant had never been *infra Legem*, and therefore could not be outlawed, *i. e.* put *extra Legem*; but said the Defendant must bring a Writ of Error, which he accordingly did, and put in Bail according to the Statute: Whereupon the Plaintiff consented, that the Outlawry should be reversed. A good Way to get Bail from a Foreigner. *Carth.* 459.

Proclamation
 in the County
 Court.

By the Stat. *Westminster* 2. c. 45. Proclamation of Outlawry is to be made in the County Court, every Freeholder being supposed to be there, because there he ought to be, and therefore bound to take Notice of it. *Carth.* 484.

Of proceeding
 against the
 Goods.

If upon the Special *Capias Utlegatum* any Goods are taken, and the Defendant is not like to put in Bail, you may proceed to get a Satisfaction out of the Goods in the following manner; but if the Goods taken are not of the Value of 50 or 60 *l.* they will not answer the Expence of proceeding against them.

Get

in the Court of King's Bench. 285

Get the Sheriff to take an Inquisition pursuant to the Writ of Special *Capias Utlegatum*, of which it may not be improper to give Notice, as on a Writ of Inquiry.

Then get the Writ returned by the Sheriff and the Inquisition transcribed by the Filacer into the Court of Exchequer.

Employ a Clerk in the King's Remembrancer's Office, who will procure a *Venditioni Exponas*, whereupon the Sheriff will sell the Goods.

Then petition the Lords of the Treasury, that the Money levied may be paid to the Plaintiff towards Satisfaction of his Debt and Charges; the Lords of the Treasury will refer the Petition to their Solicitor; you must attend him with the *Venditioni Exponas*, and return and lay before him an Affidavit of the Debt and Charges, and the Bill of Charges. Upon his Report, if in your Favor, as it generally is, if Debt and Charges exceed the Money levied, one of the Clerks of the Treasury will procure you a Warrant to the Attorney General to consent, on your moving the Court of Exchequer, that the Money levied be paid to the Plaintiff; and on such Motion and Consent the Court will order the Money to be paid accordingly.

If the Sum levied exceeds not 20 *l.* you need not apply to the Treasury, the Court of Exchequer will order it to be paid to the Plaintiff. For your better Insight into this Proceeding, I have here set forth the several Proceedings at large.

GEORGE

Exigent.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting : We command you, that you cause *Archibald Scot*, late of the Parish of *St. Martin in the Fields* in your County, Surgeon, to be demanded from County Court to County Court, until, according to the Law and Custom of * our Kingdom of *England*, he be outlawed if he does not appear, and if he does appear, then take him and keep him safely, so that you may have his Body before Us in fifteen Days from the Day of *St. Martin*, wheresoever we shall be then in *England*, to answer to *Thomas Devenish* of a Plea, wherefore whereas the said *Archibald* on &c. [the whole Declaration] to the Damage of the said *Thomas* of thirty Pounds, as he saith ; and whereupon you did in 8 Weeks from the Day of the Holy *Trinity* last past make a Return to Us, that the said *Archibald Scott* was not found in your Bailiwick : And have you there this Writ Witness Sir *William Lee*, Knight, at *Westminster*, the eleventh Day of *July* in the thirteenth Year of our Reign.

*Richardson,**Vaughan.**Proclamation.*

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting : Whereas by our Writ we have lately commanded you that you cause *Archibald Scot*, late of the Parish of *St. Martin in the Fields* in your

* I rather think it should be, according to the Law and Custom of *England*, there being since the Union no such Kingdom as *England*.

County, Surgeon, to be demanded from County Court to County Court, until, according to the Law and Custom of our Kingdom of England, he be outlawed if he shall not appear; and if he should appear, then that you should take him and keep him safe, so that you might have him before Us in fifteen Days from the Day of Saint Martin, wheresoever we should then be in England, to answer to Thomas Denish of a certain Plea of Trespass on the Case, to the Damage of the said Thomas of thirty Pounds, as is said. We therefore command you, that pursuant to the Statute made for such Purpose in the thirty-first Year of the Reign of *Eliza* 31 *Eliza* late Queen of England, you cause the said Archibald Scott to be proclaimed three several Days according to the Form of the said Statute; one of which Proclamations to be made at or near the most usual Church-Door of the Parish where the said Archibald Scott is an Inhabitant, that he render himself to you, so that you may have his Body before Us at the aforesaid Time to answer the said Thomas Denish of the Plea aforesaid: And have here this Writ. Witness Sir William Lee, Knight, at *Westminster*, the eleventh Day of July in the thirteenth Year of our reign.

Richardson.

Vaughan.

At my County-Court held for the Return of the
County of *Middlesex* at the Sign of the Exigent aforesaid.
Elephant

Elephant and Castle in the Parish of *St. Andrew Holborn* in the County aforesaid, on the twelfth Day of *July* in the Year within written, the within named *Archibald* was a first Time demanded, and did not appear; And at my County-Court held for the said County of *Middlesex* at the Sign of the *Elephant and Castle* aforesaid, the ninth Day of *August* in the Year aforesaid, the said *Archibald* was a second Time demanded and did not appear; And at my County-Court held for the said County of *Middlesex* at the Sign of the *Elephant and Castle* aforesaid, the sixth Day of *September* in the Year aforesaid, the said *Archibald* was a third Time demanded and did not appear.

The Answer of
James Brooke, Esquire,
 and
William Westbrooke, Esquire, } Sheriff.

This Writ, as above indorsed, was delivered to me the under-named present Sheriff by the above-named late Sheriff at his going out of his Office.

At my County-Court held for the said County of *Middlesex*, at the Sign of the *Elephant and Castle* aforesaid, the fourth Day of *October* in the Year aforesaid, the said *Archibald* was a fourth Time demanded, and did not appear; And at my County-Court held for the said County of *Middlesex*

Middlesex, and at the Sign of the *Elephant* and *Castle* aforesaid, the first Day of *November* in the Year aforesaid, the said *Archibald* was a fifth Time demanded and did not appear :

Therefore, by the Judgment of *John King, Esq;* and *Robert Wright, Esq;* Commissioners of our Sovereign Lord the King for the County aforesaid, the said *Archibald* is outlawed.

The Answer of
George Heathcote, Esquire,
 and
John Lequesne, Knight, } Sheriff.

By Virtue of the within Writ to me directed, I caused the within-named *Archibald* to be proclaimed three several Days according to the Effect of the within-mentioned Statute, as it is within commanded.

The Answer of
George Heathcote, Esquire,
 and
John Lequesne, Knight, } Sheriff.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting : We command you, that you fail not, on account of any Liberty within your County, but that by the Oath of good and lawful men of your County, you diligently inquire what Goods and Chattels, Lands,
Special. Cap. Utlegatum.
 Vol. I. U and

and Tenements, *Archibald Scott*, late of the Parish of *St. Martin in the Fields* in your County, Surgeon, hath, or had in your Bailiwick the first Day of *November* last past, or at any Time afterwards, on which Day he was outlawed in your County, at the Suit of *Thomas Devenish* in a certain Plea of Trespass on the Case, to the Damage of the said *Thomas* of thirty Pounds, as you have returned to Us some Time since, and by their Oath cause the same to be extended and appraised according to the true Value thereof: And whatever you find by that Inquiry take into our Hands and keep safe, so that you answer to Us the Value and Issue thereof: And having so extended and appraised the same, what you shall have done therein make known unto Us on the Octave of *St. Hilary* wheresoever we shall then be in *England*, distinctly and plainly under your Seal, and the Seals of those by whose Oath you shall have made the Extent and Appraisement: And for that the said *Archibald Scott* conceals himself, and runs up and down from Place to Place in your County, in Contempt of Us and in Prejudice to our Crown, as We are informed: We command you also, that you take the said *Archibald Scott* wheresoever he shall be found in your Bailiwick, as well within a Liberty as without, and keep him safe, so that you may have him before Us at the aforesaid Time, to do and to receive what our Court before shall in this Cause

deter

determine: And have there this Writ.
Witness Sir *William Lee*, Knight, at *West-*
minster, the twenty-sixth Day of *Novem-*
ber in the thirteenth Year of our Reign.

26th Nov. 1739.

Vaughan.

By Virtue of this Writ to me directed, *Return of*
I have taken the Body of the within *Special Cap.*
named *Archibald Scott*, whose Body *Utileg.*
kept in my safe Custody until after-
wards, to wit, on the 19th Day of *Janu-*
ary in the 13th Year of his now Majesty's
Reign, on which Day I received his Ma-
jesty's Writ of *Habeas Corpus cum Causa* to
me directed; by Virtue of which Writ
immediately after the Receipt thereof, to
wit, on the said 19th Day of *January*,
I did conduct the Body of the said *A. S.*
before *William Fortescue*, Esq; one of the
Justices of the King's Court of the Bench,
according to the Command of the said
Writ, which said Justice did then receive
from me the Body of the said *A. S.* and
did commit him to the Custody of the
Warden of his Majesty's Prison of the
 Fleet, and did then discharge me from the
further Keeping of the said *A. S.* and
therefore I cannot have the Body of the
said *A. S.* before our Lord the King on the
day within mentioned, wheresoever our
Lord the King shall then be in *Eng-*
land, as by the said Writ I am command-
ed. The further Execution of this Writ

U 2

appears

appears in the Inquisition and Inventory hereunto annexed.

The Answer of
George Heatbcote, Esquire,
and
Sir John Lequesne, Knight, } Sheriff.

The Inquisition
87.

Middlesex. An Inquisition indented, taken at the *Three Tuns* in *Brook-Street*, near *Holbourn* in the County aforesaid, the 12th Day of *December* in the thirteenth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of *Great Britain, France* and *Ireland* King, Defender of the Faith, before me George Heatbcote, Esq; and Sir John Lequesne, Knight, Sheriff of the County aforesaid, by Virtue of the King's Writ to me directed, and to the Inquisition annexed, on the Oath of *Stephen World, William Pope, Thomas Grace, Thomas Barlow, Simon Watson, John Davies, Christopher Cotterel, Peter Browne, Samuel Holloway, Thomas Harris, Richard Good, and John Bland*, good and lawful Men of my Bailiwick, who being sworn and charged to inquire of all such Matters and Things as in the said Writ are mentioned and contained on their Oaths do say, that *Archibald Scott* in the said Writ named, on the first Day of *November* last, on which Day he became outlawed, was, and on the Day of taking this Inquisition is possessed as of his own proper Goods and Chattels, of and in the several

Several Goods and Chattels particularly mentioned and expressed in the Schedule or Inventory thereof hereunto annexed, which said Goods and Chattels are worth, to be sold, the Sum of 39 l. 3 s. All which said Goods and Chattels I the said Sheriff, by Virtue of the said Writ, on the Day of taking this Inquisition, have seized and taken into his Majesty's Hands according to the Command of the said Writ: And the Jurors aforesaid on their said Oath further say, that the said *Archibald Scott* on the said first Day of November, or at any Time since, had not any Lands or Tenements, or on the Day of taking this Inquisition hath any other more Goods or Chattels in my Bailiwick which can be seized or taken into his Majesty's Hands, according to the Command of the said Writ. In Witness whereof as well I the said Sheriff as the said Jurors have to this Inquisition set our Seals the Day, Year and Place first above mentioned.

Hands

GEORGE the Second, by the Grace of Vend. Expo-
God, of *Great Britain, France and Ireland*^{nas.}
King, Defender of the Faith, &c. To the
Sheriff of *Middlesex*, Greeting: Whereas
by a certain Inquisition indented, taken at
the *Three Tuns* in *Brook-Street* near *Hol-*
born in the said County the twelfth Day
of *December* last, before you *George Heath-*
ate, Esq; and Sir *John Lequesne*, Knight,
Sheriff of our said County, by Virtue of
our Writ of *Capias Utlegatum* under the
U 3 Seal

Seal of our Court of *King's Bench* to you the said Sheriff directed, whereby we commanded you to inquire what Goods and Chattels, Lands and Tenements *Archibald Scott*, late of the Parish of *St. Martin in the Fields* in the County of *Middlesex* had within your Bailiwick on the first Day of *November* last past, or at any Time afterwards, on which Day he was outlawed in the said County at the Suit of *Thomas Devenish* in a Plea of *Trespas* on the Case. It was found by the Oaths of *Stephen Worl* and other good and lawful Men of the said County, that *Archibald Scott*, in the said Writ named, on the first Day of *November* last, on which Day he became outlawed, and on the Day of taking the said Inquisition, was possessed, as of his own proper Goods and Chattels, of and in the several Goods and Chattels particularly mentioned and expressed in the Schedule of Inventory thereof hereunto annexed which said Goods and Chattels were worth to be sold the Sum of thirty-nine Pounds and three Shillings; all which said Goods and Chattels you the said Sheriff, by Virtue of our said Writ, on the Day of taking the said Inquisition did seize and take into our Hands, as by the said Writ and Inquisition taken thereupon transcribed into our Court of *Exchequer* and there remaining in the Custody of our Remembrancer, more fully appears. And being desirous to be satisfied of the Value of the said Goods and Chattels

the said Inquisition mentioned as is just, command you, that you sell, or cause to be sold, the said Goods and Chattels, and every Part thereof, for the best Price that can be got for the same; and at the least for the said Sum of thirty-nine Pounds three Shillings, at which they were appraised as aforesaid; so that you have the Sum of Money arising by such Sale before the Barons of our Exchequer at *Westminster* the 9th Day of this Instant *February*, when and there to be paid in for our Use, and that you make then and there distinctly and clearly appear to our said Barons all that you shall do concerning the Premises: And have you then and there this Writ. Witness Sir *John Comyns* Knight, at *Westminster*, the fourth Day of *February* in the thirteenth Year of our Reign, by the said Transcript and by the Barons.

Masbam.

By Virtue of this Writ to me directed, *The Return.* I have caused the Goods and Chattels in the Schedule or Inventory hereunto annexed, mentioned to be sold for the Sum of thirty-nine Pounds and three Shillings, being the best Price I could get for the same, which Moneys I have before the Barons of the King's Exchequer at *Westminster*, on the Day within mentioned, ready to pay to his Majesty's Use according to the Command thereof.

The Attorney's Practice

The Answer of
 George Heatbcote, Esquire,
 and
 Sir John Lequesne, Knight, } Sheriff.

*To the Right Honorable the Lords
 Commissioners of his Majesty's Treas-
 ury.*

*The humble Petition of Thomas
 Devenish*

Sheweth,

*Petition to the
 Lords of the
 Treasury that
 the Money may
 be paid to the
 Plaintiff.*

THAT *Archibald Scott*, late of the
 Parish of *St. Martin in the Fields* in
 the County of *Middlesex*, Surgeon, being
 indebted to your Petitioner in the Sum of
 21 l. your Petitioner did at his very great
 Charge in *November* last prosecute the said
Archibald Scott to an Outlawry, and by Vir-
 tue of a Special *Capias Utlegat.* directed to
 the Sheriff of *Middlesex*, several Goods of
 the said *Archibald Scott* were seized and
 found by Inquisition to be of the Value of
 39 l. 3 s. which Goods were afterwards
 sold by the said Sheriff by Virtue of a
 Writ of *Venditioni Exponas* at the same
 Price and Value they were so appraised
 at; and the Money thereupon raised now
 remains in the Hands of the Sheriff of
Middlesex.

That your Petitioner's said Debt, and
 the Charge he has already been at, in
 prosecuting the said Outlawry, greatly ex-
 ceed

ceed the Sum so remaining in the said Sheriff's Hands.

Wherefore your Petitioner most humbly prays your Lordships, that the Money to be levied as aforesaid, may be paid over to your Petitioner :

And your Petitioner, as in Duty bound, shall ever pray, &c.

Thomas Devenish.

Whitehall Treasury-Chamber, 13th February 1739.

The Right Honorable the Lords Commissioners of his Majesty's Treasury are pleased to refer this Petition to *Nicholas Paxton, Esq;* who is to consider the same, and report to their Lordships a true State of the Petitioner's Case, together with his Opinion what is fit to be done therein.

Reference
thereon.

J. Scrope.

Thomas Devenish, of the Parish of St. Martin in the Fields in the County of Middlesex, Carpenter, maketh Oath, That Archibald Scott, late of the said Parish of St. Martin in the Fields in the County of Middlesex, Surgeon, is justly and truly indebted to this Deponent in the Sum of twenty-one Pounds for Work done and Materials found by this Deponent in his Trade of a Carpenter for the said Archibald Scott, for which Debt this Deponent did cause several Writs successively to be issued

Plaintiff's Affidavit of the
Amount of his
Debt and
Charges.

issued out of his Majesty's Court of King's Bench against the said *Archibald Scott*, and did use his utmost Endeavours to get the *Archibald* arrested on each of the said Writs: But this Deponent not being able to procure any of the said Writs to be executed, did cause the said *Archibald Scott* to be sued to an Outlawry, and thereupon several of his Goods to the Amount of thirty-nine Pounds three Shillings, to be seized into his Majesty's Hands, and sold by Virtue of a Writ of *Venditioni Exponas*, as this Deponent is informed and believes. And this Deponent saith, that his Attorney's Bill for Fees and Disbursements in outlawing the said *A. S.* and causing his Goods to be so seized and sold, doth amount unto the Sum of fourteen Pounds sixteen Shillings and Eleven Pence, as appears to this Deponent by such Bill delivered to him by his said Attorney, which Bill this Deponent, as far as he is capable of judging, believes to be just and reasonable. And this Deponent also saith he hath paid the several following Sums on Account of such Outlawry, and which Sums are not included in his said Attorney's Bill, *viz.* To the Sheriff's Officer for executing the Writ of *Capias Utlegatum* 2 l. 2 s. To two Appraisers for appraising the said Goods the Sum of 2 l. 2 s. To the Sheriff's Officer the further Sum of 2 l. 16 s. 6 d. in Part of the Sum of 5 l. 1 s. which the said Officer demands of this Deponent for being 15 Days in Possession of the said Goods in the

Defen-

Defendant's House, for Charges of removing the said Goods, and for Rent of a Room wherein the said Goods were deposited till sold; which said several Sums of 14*l.* 16*s.* 11*d.* 2*l.* 2*s.* 2*l.* 2*s.* 2*l.* 16*s.* 6*d.* do, together with this Defendant's said Debt of 21*l.* amount unto the Sum of 42*l.* 17*s.* 5*d.* besides the Fees to be paid in the Treasury and other Offices in obtaining his Majesty's Warrant, which this Deponent is informed and believes will amount to 10*l.* more.

*Sworn the 15th Day of
February 1739. be-
fore me at my Cham-
bers in the Temple.*

T. Parker.

*To the Right Honorable the Lords Commis-
sioners of his Majesty's Treasury.*

May it please your Lordships,

IN humble Obedience to your Lordship's *Report on Re-
ference.*
Commands signified to me by Mr. *Scrope*, I have considered of the annexed Petition of *Thomas Devenish*, setting forth, that *A. S.* late of the Parish of *St. Martin* in the Fields in the County of *Middlesex*, Surgeon, being indebted to him in the Sum of twenty-one Pounds, he did at a very great Charge in *November* last prosecute the said *S.* to an Outlawry, and by Virtue of a Special *Ca. Utlegat.* directed to the Sheriff of *Middlesex*, several Goods

Goods of the said *A. S.* were seized, and found by Inquisition, to be of the Value of thirty-nine Pounds three Shillings, which Goods were afterwards sold by the said Sheriff by Virtue of a Writ of *Venditioni Exponas* at the same Price and Value they were so appraised at, and the Money thereupon raised now remains in the Hands of the Sheriff of *Middlesex*; that the Defendant's said Debt, and the Charges he has already been at in prosecuting the said Outlawry, greatly exceed the Sum so remaining in the said Sheriff's Hands; the Petitioner therefore prays your Lordships, that the Moneys so levied may be paid over to him.

And I do most humbly certify to your Lordships, that I have received Satisfaction as to the Truth of all the Allegations in the said Petition contained, as well by the Sight of the several Records thereby refer'd, unto, and a Certificate of the said Outlawrys being transcribed into the Office of his Majesty's Remembrance of the *Exchequer*, signed by Mr. *Henry Ord*, one of the Attorneys of that Office, as by the Affidavit of the Petitioner; whereby it appears to me, that the said *A. S.* is indebted to the Petitioner in the Sum of twenty-one Pounds, for Work done and Materials found by the Petitioner in his Trade of a Carpenter: And it appearing by the Affidavit of the said Petitioner, that his said Debt, with the several Charges he had been already put to in outlawing the said

said *A. S.* do exceed the Sum levied by the Sheriff; and as the Petitioner must still necessarily be put to a further Expence, I am most humbly of Opinion, that it may be proper for your Lordships to send your Warrant to his Majesty's Attorney General authorizing him to Consent to an Order of his Majesty's Court of *Exchequer*, for *George Heathcote, Esq;* and *John Lequesne, Knight*, the present Sheriff of the County of *Middlesex*, paying over the said Sum of thirty-nine Pounds three Shillings now remaining in their Hands (after deducting the Sheriff's Poundage for levying the same, and other incident Charges) unto the Petitioner for his own Use towards Satisfaction of his said Debt and Costs when ever a Motion shall be made in the said Court of *Exchequer* for that Purpose.

All which is nevertheless most humbly submitted to your Lordships superior Judgment.

20th Feb. 1739.

Nich. Paxton.

George R.

WHEREAS we are given to understand, that there is remaining in the Hands of *George Heathcote, Esq;* and Sir *John Lequesne, Knight*, the present Sheriff of the County of *Middlesex*, the Sum of thirty-nine Pounds and three Shillings, for so much levied by him on the several Goods belonging to *Archibald Scott*, which were seised into our Hands by Virtue of an Inquisition taken by Virtue of a

The King's Warrant counter signed by the Lords of the Treasury for the Attorney General to consent to the Sheriff's paying 39 l. 3 s. levied on a Capias Utlegatum to the Pro Writ fecutor.

Writ of *Capias Utlegatum* issued out of our Court of King's Bench against the said *Archibald Scott*, at the Suit of *Thomas Devenish*, for the Recovery of a Debt due and owing to him from the said *Archibald Scott*: And whereas, it further appears by Reports, Certificates, and other proper Testimonials, which the Commissioners of our Treasury have laid before us, that the Debt due and owing to the said *Thomas Devenish* from the said *Archibald Scott*, together with the Costs which he hath been at in carrying on the said Prosecution against the said *Archibald Scott* for Recovery of the said Debt, doth exceed the said Sum of thirty-nine Pounds and three Shillings remaining in the Hands of the said Sheriff as aforesaid; To the End therefore that the said *Thomas Devenish* may have and receive some Recompence and Satisfaction towards his said Debt, and the Charges he hath been at in suing for the same, Our Will and Pleasure is, and we do hereby authorize and direct you to consent and agree, that so much of the said Sum of thirty-nine Pounds and three Shillings as doth or shall remain in the Hands of the said Sheriff (after deducting the usual Poundage for levying the same) be paid over to the said *Thomas Devenish* towards Satisfaction of his said Debt and Costs accordingly, whenever he by his Counsel learned in the Law shall think fit to move our Court of Exchequer for an Order for that Purpose; And we do also authorize and

and direct you to do, or cause to be done,
such further or other Acts as our said Court
of Exchequer upon such Motion shall or
may judge necessary for rendering our In-
tentions herein most firm, valid, and effec-
tual: And for so doing, this shall be your
Warrant. Given at our Court at St. James's
the 26th Day of February 1739. in the
thirteenth Year of our Reign.

By his Majesty's Command.

To our trusty and well-
beloved *Dudley Rider*,
Esq; our Attorney
General.

R. Walpole.
Geo. Dodington.
T. Winnington.
G. Earle.

GEORGE the Second, by the Grace of Subpœna,
God, of Great Britain, France and Ireland
King, Defender of the Faith, &c. To
George Heatcote, Esq; and Sir *John Le-*
vesne, Knight, Sheriff of our County of
Middlesex, or to their Undersheriff, Greet-
ing: We command you, that laying aside
all Excuses you obey, fulfil, and per-
form all and every Matter and Thing
specified in an Order of our Court of Ex-
chequer at *Westminster*, made in a Cause in
our said Court depending between Us and
Archibald Scott outlawed at the Suit of
Thomas Devenish upon an Outlawry, the
tenor of which Order for your fuller In-
formation therein is hereto annexed: And
as you are not to omit under the Penalty
of one hundred Pounds, which we shall
cause

cause to be levied upon your Goods and Chattels, Lands and Tenements, for our Use, if you neglect this our Command. Witness Sir *John Comyns*, Knight, at *Westminster*, the nineteenth Day of *May* in the thirteenth Year of our Reign. By the said Order made the same Day and by the said Barons.

Masbam.

An Order to the Sheriff to pay the Money to the Prosecutor.

It is found in a certain Book of Orders of this Exchequer, *to wit*, amongst the Orders of *Easter Term* in the thirteenth Year of the Reign of King *George the Second* in the Page on the Part of this Remembrancer as follows :

Monday the 19th Day of May 1740.

Between the King and *Archibald Scott* outlawed at the Suit of *Thomas Devenish* upon an Outlawry upon the Motion of Mr. *Ord* of Counsel with *Jane Devenish*, Widow and Administratrix of *Thomas Devenish* deceased, informing the Court that the said *Archibald Scott*, having been prosecuted to an Outlawry by the said *Thomas Devenish* upon an Action of Trespass upon the Case in his Majesty's Court of King's Bench, a Writ of Outlawry thereupon issued against the said Defendant under the Seal of the said Court, directed to the Sheriff of *Middlesex*, by Virtue whereof the said Sheriff seized by Inquisition several Goods and Chattels belonging to the said Defendant, appraised at 39 *l.* 3 *s.* and further informing

forming the Court, that the said Writ of Outlawry and Inquisition being transcribed into this Court, a Writ of *Venditioni Exponas* under the Seal of this Court issued on the 4th Day of *February* last for selling the said Goods, returnable the 9th Day of the said Month of *February*, at which Time *George Heathcote*, Esq; and *John Lequesne*, Knight, the present Sheriff of *Middlesex*, returned the said Writ, and certified, that they had sold the said Goods and Chattels for the said Sum of 39 *l.* 3 *s.* It was therefore prayed by the said Mr. *Ord*, that the said *George Heathcote*, Esq; and Sir *John Lequesne*, Knight, or their Under Sheriff, might forthwith pay to the said *Jane Devenish*, Administratrix of the said Prosecutor, or her Order, the said Sum of 39 *l.* 3 *s.* towards Satisfaction of the Debt due from the said Defendant to the said Prosecutor: Whereupon and on hearing Sir *Dudley Ryder*, Knight, his Majesty's Attorney General, consenting thereto on Behalf of his Majesty, it is ordered by the Court as prayed, the said Sheriff first deducting out of the said 39 *l.* 3 *s.* the usual Poundage.

Masbam.

Some of the Expences out of Pocket in the above Proceeding.

To the Sheriff for taking the In-	}	1	15	6
quisition				
Filing <i>Capias Utlegatum</i>		0	1	0
for the Transcript two Skins		1	7	1
Vol. I.	X			Duty

cause to be levied upon your Goods and Chattels, Lands and Tenements, for our Use, if you neglect this our Command. Witness Sir *John Comyns*, Knight, at *Westminster*, the nineteenth Day of *May* in the thirteenth Year of our Reign. By the said Order made the same Day and by the said Barons.

Masbam.

An Order to the Sheriff to pay the Money to the Prosecutor.

It is found in a certain Book of Orders of this Exchequer, *to wit*, amongst the Orders of *Easter Term* in the thirteenth Year of the Reign of King *George the Second* in the Page on the Part of this Remembrancer as follows :

Monday the 19th Day of May 1740.

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forming the Court, that the said Writ of Outlawry and Inquisition being transcribed into this Court, a Writ of *Venditioni Exponas* under the Seal of this Court issued on the 4th Day of *February* last for selling the said Goods, returnable the 9th Day of the said Month of *February*, at which Time *George Heathcote*, Esq; and *John Lequesne*, Knight, the present Sheriff of *Middlesex*, returned the said Writ, and certified, that they had sold the said Goods and Chattels for the said Sum of 39 *l.* 3 *s.* It was therefore prayed by the said Mr. *Ord*, that the said *George Heathcote*, Esq; and Sir *John Lequesne*, Knight, or their Under Sheriff, might forthwith pay to the said *Jane Decey*, Administratrix of the said Prosecutor, or her Order, the said Sum of 39 *l.* 3 *s.* towards Satisfaction of the Debt due from the said Defendant to the said Prosecutor: Whereupon and on hearing Sir *Dudley Ryder*, Knight, his Majesty's Attorney General, consenting thereto on Behalf of his Majesty, it is ordered by the Court as prayed, the said Sheriff first deducting out of the said 39 *l.* 3 *s.* the usual Poundage.

Masbam.

Some of the Expences out of Pocket in the above Proceeding.

To the Sheriff for taking the In-	}	1	15	6
quisition				
Filing <i>Capias Utilegatum</i>	—	0	1	0
For the Transcript two Skins		1	7	1
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Duty on 2 Presses of Parchment	o	2	0
Certificate	o	2	0
Filing Transcript	o	2	0
Inrolling it	I	0	0
To the Master of the Exchequer	}	I	0
Office			
Rule and Side-bar Motion	o	8	0
<i>Venditioni Exponas</i>	o	9	10
Schedule 8 d. per Sheet	o	12	0
Return of <i>Venditioni Exponas</i>	o	2	4
Affidavit to lay before the Soli-	}	o	2
citor of the Treasury, Duty			
and Oath			
Certificate of the Outlawry	}	o	4
from the Exchequer Office			
Fee to the Solicitor of the	}	I	1
Treasury			
His Clerk	o	5	0
Paid at the Treasury	3	3	0
Attorney General's Fee	2	2	0
His Clerk	o	2	6
Counsel to move	o	10	6
To the Clerk of the Exchequer	}	o	3
for attending Motion			
Drawing Order	o	5	0
Copy to enter and Duty	o	1	10
Entering to the Master	o	5	4
Ingrossing Order under Seal and	}	o	9
<i>Subpœna</i>			
Filing <i>Venditioni Exponas</i> and	}	o	2
Return			
The Clerk of the Exchequer's	}	o	3
Term Fee			

Of superseding
an Outlawry.

If the Defendant has Notice that an Exi-
gent is issued out against him, he must find

out

out to what Sheriff it is directed, and get a Note of it, as the Plaintiff's Name, his own Name and Addition, the Cause of Action, and Return; from this Note the Filacer will make out a *Supersedeas* on the Defendant's Attorney entering an Appearance; which *Supersedeas* must be carried to the Sheriff to be allowed before the Return of the Exigent: The Expence is as follows:

Appearance	—	o	2	o
<i>Supersedeas</i>	—	o	3	o
Duty	—	o	1	6
Seal	—	o	o	7
Allowance by the Sheriff		o	2	4

GEORGE the Second, by the Grace of *Supersedeas* God, of Great Britain, France and Ireland to an Exigent. King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting: Whereas by our Writ we have lately commanded you, that you should cause C. K. late of the City of *Oxford* in the County of *Oxford*, Gentleman, to be demanded from County Court to County Court, until, according to the Law and Custom of our Kingdom of *England*, he be outlawed, if he did not appear; and if he appeared, then that you should take him and keep him safe, so that you might have him before us in five Weeks from *Easter Day*, wheresoever we shall then be in *England*, to answer to W. of a certain Plea of *Trespass* on the Case, to the Damage of the said *William* of forty-eight Pounds, as is said: Now as much as the said *Charles*, before the

X 2

Issuing

Issuing our said Writ of Exigent, appeared in our Court before us by *Robert Richardson* his Attorney, and often offered to answer the said *William* of the Plea aforesaid, our said Writ did not duly issue; we therefore command you, that you forbear all further demanding the said *Charles*, or outlawing, taking, or any way molesting him on that Occasion: And have there this Writ. Witness Sir *William Lee*, Knight, at *Westminster*, the ninth Day of *May* in the twelfth Year of our Reign.

Richardson.

Vaughan.

Proceedings against Peers, &c.

If the Defendant be a Peer, or a Body Corporate, the Sheriff is to summons the Party on the Original, and if the Defendant does not appear, the Filacer makes out a *Distringas* against the Defendant's Lands and Chattels; whereupon the Sheriff returns Issues to the Value of, &c. and then you have an *Alias Distringas*, and *Plur. Distringas ad Infinitum*, till the Defendant do appear; and if the Sheriff return but small Issues, the Court on Motion will order him to return better; and these Issues are to be estreated into the Court of *Exchequer*, and levied on the Defendant's Lands and Chattels to the King's Use by way of Forfeiture.

Proceedings

Proceedings relating to Attornies.

YOU are not to arrest an Attorney, be the Cause of Action what it may, he being always supposed to be in Court; but you must file a Bill against him with the Clerk of the Declarations written on Parchment, with a double Penny Stamp, and deliver him a Copy of it on double Penny Stamp Paper, and give a Rule for him to plead thereto.

A Person privileged in Court shall not have an Imparlance, neither can a Bill be filed against him in Vacation, because it cannot have Reference to the precedent or subsequent Term; but it must be filed *se-*
dente Curia; and if there be a joint Cause of Action against an Attorney and another Person, you cannot declare as against one in Person, and the other by Bill, but against both, as *in Custodia. Comb. 465.*

If an Attorney of the Common Pleas be sued in this Court, he doth not waive his Privilege by filing Bail, but may plead his Privilege to that Action, or any other Action, on a Declaration filed against him in the same Term by the By.

If he waives his Privilege by pleading in chief to the first Action, it is a Waiver in all other Actions commenced against him in that Term.

Attorney C. B.
in custod.
Mar. can-
not plead his
Privilege.

If an Attorney of the *Common Pleas* be in actual Custody of the Marshal of the Court of *B. R.* by Process, he cannot plead his Privilege in any Action on any Bill filed against him.

Attorney
C. B. sued by
an Attorney
B. R. loses his
Privilege.

If an Attorney of *C. B.* be brought into the Court of *B. R.* at the Suit of an Attorney there, which is an Estoppel to the Defendant's Privilege, even in such case the Defendant shall be ousted of his Privilege in all other Actions commenced against him in *Banco Regis* in the same Term, because the Jurisdiction of this Court was attached upon him by the first Action. *Carth. 377.*

Attorney suing
or sued jointly,
or in Au er
Droit, loses his
Privilege.

An Attorney cannot have his Privilege but where he sues or is sued singly, and in his own Right, or on his own Account, and not where he sues or is sued jointly, or in *Auter Droit*, as Executor, &c.

The Form of a Bill against an Attorney.

Bill against
an Attorney.

Middlesex. A. B. complains of *C. D. Gent.* one of the Attornies of the Court of our Lord the King present here in Court, before the King himself in his proper Person, for that, *to wit*, that whereas [the rest as in other Declarations to] And thereupon he brings Suit, &c.

R. R. for the	}	Pledges of	}	John Doe,	
Plaintiff.				Prosecuting	and
Defendant					Richard Roe.
in Person.					

in the Court of King's Bench. 311

Of Michaelmas Term in the twelfth Year
of the Reign of our Sovereign Lord George
the Second, &c.

An Attorney of this Court sues by Ori-
ginal, and declares *in Propria Persona* upon
his Privilege *secundum Consuetudinem Curiae*.
Per Cur. the Declaration is naught, declaring
in this manner by Privilege on Original,
for the Privilege of Attorneys is in Suits by
Bill: But when they sue by Original, they
must declare as others do in common Form.

2 Lev. 39.

If the Bill be filed, and a Copy thereof
delivered 4 Days exclusive before the End
of the Term, including *Sunday* as one, the
Defendant must plead as of that Term, the
Plaintiff having entered a Rule to plead,
and demanded a Plea; but if the Bill be
not filed, and a Copy delivered within that
Time, the Defendant is intituled to have an
Impeachment.

If an Attorney be Plaintiff, he makes
out an Attachment of Privilege in this
Form.

GEORGE the Second, by the Grace of
God, of Great Britain, France and Ireland
King, Defender of the Faith, &c. To the
Sheriff of Middlesex, Greeting: We command
you that you attach C. D. E. F. G. H. (you
may put in as many as you have Occasion) if
they may be found in your Bailiwick, and
safely keep them, so that you may have
their Bodies before us at Westminster, on
next after to answer A. B.
X 4 Gentleman,

*Attorney can't
have Privilege
if he sues by
Original.*

*What Time
an Attorney
has to plead.*

*Attachment of
Privilege for
an Attorney.*

Gentleman, being one of the Attornies of our Court before us, according to the Liberties and Privileges for such Attornies and other Ministers of the same Court, from the Time whereof the Memory of Man is not to the contrary, used and approved in the same, in a Plea of Trespas: And have there then this Writ. Witness, &c.

You pay the Chief Clerk nothing for signing this Writ, but the Sealer takes 7d. for the Seal.

Attachment no Original.

An Attachment of Privilege is but as a *Latitat*, and not as an Original. 1 *Shon.* 367.

Whether an Acetiam necessary.

The Statute 13 *Car. 2. Stat. 2. c. 2.* which enacts, that no Person, who shall be arrested by Colour of any Process in which the Cause of Action is not particularly expressed, and for which the Defendant is bailable by the Statute 23 *H. 6. c. 10.* shall be compelled to give Security for Appearance in any Penalty exceeding 40 *l.* does not by the express Words of the Statute extend to an Attachment of Privilege, but such Course shall be taken thereupon for Security for Appearance as hath been used.

Ideo Q. if there be any Occasion for an *Acetiam ville* in an Attachment of Privilege.

What Time a Person sued by an Attorney has to plead.

If the Attorney delivers his Declaration 4 Days exclusive before the End of the Term, the Defendant must plead as of that Term.

When to deliver his Declaration.

If an Attorney delivers his Declaration 4 Days exclusive before the End of the Term.

Term in which the Attachment was returnable, and enters a Rule to plead, and demands a Plea, the Defendant shall be obliged to plead as of that Term; and if he does not deliver his Declaration in that Time, the Defendant will have an Imparlance; and if he does not deliver his Declaration before the *Effoin* Day of the subsequent Term, the Defendant will have an Imparlance to the Term next following.

An Attorney shall not commence an Action for Fees, Charges or Disbursements, until the Expiration of one Month or more after he shall have delivered to the Party to be charged therewith, or left for him at his

Cannot bring Action till a Month after Bill delivered.

Dwelling-House, or last Place of Abode, a Bill of such Fees, &c. written in common legible Hand in *English*, (except Law Terms and Names of Writs) and in Words at length (except Times and Sums) subscribed with his proper Hand. *Stat. 2 Geo. 2. c. 23.*

An Attorney may write his Bill of Fees, &c. with such Abbreviations as are now commonly used in the *English* Language, *Stat. 12 Geo. 2.*

And upon Application to the Lord Chancellor, &c. or unto a Judge, &c. of any of the said Courts respectively, in which the

Bill to be referred to be taxed.

Business or the greatest Part in Value shall have been transacted, and Submission of the Party to pay what upon Taxation shall appear due, the said Bill shall be referred (though no Action commenced thereon) to be taxed without any Money being brought into Court; and if the Attorney shall

And what
found due to
be forthwith
paid.

Or liable to
Attachment,
&c.

If the Attorney
be over-paid, to
refund.

Or liable to
Attachment,
&c.

Costs of Taxa-
tion.

If Bill taxed
less by a sixth
than Bill de-
livered, Attor-
ney to pay Costs.
If not, Attor-
ney or Client,
according to the
Reasonableness
of the Bill.

shall refuse or neglect to attend, the Of-
ficer may tax the Bill *ex parte*, (and pend-
ing such Reference, no Action to be com-
menced for the said Demand;) and upon
the Taxation, the Party shall forthwith pay
the said Attorney the whole Sum found
due thereon, or in Default thereof shall
be liable to an Attachment, or Process of
Contempt, or other Proceeding at the Elec-
tion of the Attorney, as the Party was be-
fore liable unto; and if on the Taxation
shall be found that the Attorney has been
over-paid, then the Attorney shall forthwith
refund, and pay to the Party all such Mo-
ney as the Officer shall certify to have been
so over paid, or in Default thereof be liable
to an Attachment or Process of Contempt
or such other Proceeding, at the Election
of the Party, as he would have been in
case this Act had never been made; and
the Court is to award the Costs of the
Taxation to be paid according to the Event
thereof, that is to say, if the Bill taxed be
less by a Sixth than the Bill delivered, the
Attorney is to pay the Costs. If it shall not
be less, the Court to charge the Attorney
or Client, according to the Reasonableness
or Unreasonableness of the Bill. *Stat. 12 Geo. 2. c. 23.*

But that Statute shall not extend to any
Bill of Fees, Charges and Disbursement
that shall become due from any Attorney
or Solicitor to any other Attorney, Solicitor,
or Clerk. *Stat. 12 Geo. 2.*

*of Writs of Habeas Corpus and
Certiorari, and Proceedings
thereon.*

WRITS of *Habeas Corpus* are of various Sorts, and for several Purposes, ^{Proceedings by Habeas Corpus.} where a Defendant is arrested by the Sheriff, either on *Mesne Process*, or on an execution, he may, to avoid going to the County Gaol, or to get out if already in Prison, remove himself by *Habeas Corpus* into the King's Bench Prison, and enjoy the Benefit of the Rules, which are very spacious and open, on giving Security to the Marshal.

A Writ of *Habeas Corpus* to remove the Body of a Prisoner, directed to the Sheriff of London or Middlesex, the Judge of the Marshalsea Court, or other inferior Court within five Miles of London, may be granted in Vacation or Term-Time, returnable immediately; but if the *Habeas Corpus* be directed to any other Sheriff or Court farther distant, it must be returnable on a certain Day in Court, unless it be to deliver over a Prisoner in Discharge of his Bail. ^{When returnable immediately, and when not.}

If upon any *Certiorari* or *Corpus cum Cause*, it be returned, that the Prisoner is condemned by Judgment, he shall be re- ^{Habeas Corpus to inferior Courts after Judgment, Party to be remanded.} manded, and remain in Prison without being let to Bail against the Will of the Plaintiffs,

tiffs, until Satisfaction be made them of the Sums adjudged. *Stat. 2 Hen. 5. Stat. 1. c. 2*

Habeas Corpus not to be allowed unless delivered before Jury sworn.

No *Habeas Corpus*, or other Writ, sued forth of any of the Courts at *Westminster* to remove any Cause depending in any Court, shall be allowed, except the said Writ be delivered to the Judge or Officer before the Jury have appeared, and one of the Jury sworn. *Stat. 43 Eliz. c. 5. § 2. 3 Car. 1. c. 4. & 16 Car. 1. c. 4.*

Or before Issue joined.
Carth. 69.

No *Habeas Corpus*, *Certiorari*, or other Writ or Process (other than Writs of Error and Attaint) to be sued forth of his Majesty's Courts at *Westminster*, &c. to stay or remove any Cause depending in any Court of Record, which shall have Jurisdiction to hold Plea in that Cause, shall be received or allowed, except the said Writs be delivered to the Steward, Judge or Officer before Issue or Demurrer joined, so as the said Issue or Demurrer be not joined within six Weeks next after the Arrest or Appearance. *Stat. 21 Jac. 1. c. 23. § 2.*

Cause remanded not to be removed again before Judgment.

If any such Cause shall be removed or stayed by any such Writ or Process, and afterwards the same Cause shall be remanded, the same Cause shall never afterwards be removed or stayed before Judgment by any Writ whatsoever. *Same Stat. § 3.*

Causes not exceeding 5l. not to be removed.

If in any Cause not concerning Freehold Lease or Rent, it shall appear or be laid in the Declaration, that the Debt, Damages

Things demanded, do not amount to
 1. such Cause shall not be stayed nor re-
 moved into any other Court by any Writ,
 other than Writs of Error or Attaint. *Same*

Stat. § 4.

If any Writs shall be sued forth contrary *Writs contrary*
 to the Intent of this Act, the Judge or *to this Act not*
 Officer to whom such Writs shall be directed *to be allowed.*
 may disallow the same, and proceed as if
 such Writs had been granted. *Same*

Stat. § 5.

Provided that this Act shall extend only *To what*
 to such Courts of Record, and for so long *Courts this*
 Time only as there shall be an utter Bar- *Act extends.*
 r of three Years standing, that shall be
 Steward, Town-Clerk, Judge or Recorder
 of the same Court, or that shall be Assistant
 to such Judge, and there present, and not
 of Counsel in any Cause then depending in
 the same Court. *Same Stat. § 6.*

This Act shall not extend to any Cause *Nor to any*
 wherein any such Plea shall be pleaded as *Cause where*
 could not be tried within the Jurisdiction *the Plea not*
 of such inferior Court. *Same Stat. § 7.* *triable in the*
inferior Court.

The Judges of such inferior Courts, as are *Inferior Courts*
 described in the above Statute of 21 Jac. 1. *may proceed in*
 may proceed in Causes therein specified, *Causes not ex-*
 which appear or are laid not to exceed 5 l. *ceeding 5 l.*
 though there may be other Actions against *though there be*
 such Defendants, wherein the Plaintiff's De- *Actions for*
 mands may exceed 5 l. *above 5 l.* *Stat. 12 Geo. 1. c. 29.*

3.

The Sheriff upon a *Habeas Corpus* is not *Charges to be*
 bound to bring up the Prisoner, unless rea- *tendered the*
 sonable *Sheriff.*

sonable Charges be tendered him. *Cox and Dowd*, Hil. 20 & 21 Car. 2.

Habeas to the Cinque Ports. Said that a *Habeas Corpus* at the King's Suit lies to the Cinque Ports, but not to the Suit of a Subject. *Pamphlet's Case*, Mich. 21 Car. 2. *Sed vide Alder and Pusie's Case in Scacc. Trin.* 23 Car. 2. & *Pell's Case Hil.* 25, 26 Car. 2. 3 *Keb.* 279. *Trem.* 360.

Tto' Defendant bailed, Cause should be returned.

Habeas Corpus cum Causa to the Portreeve of *Yeovil* in *Com. S.* who returns *quod ante adventum istius brevis* the Party was bailed: It was moved by the Plaintiff's Counsel, that the Portreeve might make better Return; and ruled that he should for though the Body be bailed, he ought to return the Cause, and sometimes it is added *Corpus tamen* he can't have at that Day, *quia traditur in Ballium*, and he can be bailed after the *Habeas Corpus* received. *Salmon and Slade*, Hil. 25 & 26 Car. 2. 2 *Keb.* 450. 1 *Sid.* 386.

The Defendant is arrested by Process out of *Exeter Court* in *placito transgr' super Casum*, Bail is given, the Plaintiff declares and the Cause is removed by *Habeas Corpus*; then the Plaintiff delivers two Declarations, one for Words, and another for Money, *Assumpsit. Hale*, That if the Party have declared before the *Habeas Corpus* delivered, the Bail shall be special only as to that Action, and shall be common Bail to the other Action; but if no Declaration, then the Bail put in upon the *Habeas Corpus* shall be special Bail to all Actions of the Plaintiff against the Defendant of that Term, and the Plaintiff can't declare before the *Habeas*

Habeas Corpus allowed. *Serle and Newton, Hil. 25, 6 Car. 2.*

Habeas Corpus to remove a Cause out of London, the Plaintiff prays a *Procedendo*, because the Action is for calling a Woman Whore, which is not actionable elsewhere. The Defendant's Counsel alledged, that neither of the Parties lived in London, nor were the Words spoken there. *Hale*, If the Words were not spoke there, you shall have no *Procedendo*, for else you might make the Words actionable all over England, laying them in London. *Anonymus, Mich. 27 Car. 2. 2 Roll. Ab. 69. Carth. 75.*

Habeas Corpus to remove a Cause out of an inferior Court, and the Plaintiff making search finds Bail; but the *Habeas Corpus* not being returned and filed, the Bail signified nothing, and therefore he carried the Cause back by *Procedendo*; and of this the Defendant complained to the Court; but ruled, that the Defendant cannot put in Bail till the *Habeas Corpus* be returned. *Masters and Bruges, Mich. 20 Car. 2.*

A *Habeas Corpus* ought to be on Motion where the Party is committed for a Crime. *Lev. 1.*

A Writ of *Habeas Corpus* suspends the power of the inferior Court, so that if they proceed after, the Proceedings are void, *ex coram non Judice. 1 Salk. 352. Cro. Car. 2 Jones 209. 2 Mod. 195.*

By the *Habeas Corpus* the Proceedings in the Court below are at an End, and the Proceedings in the superior Court are de

novo, and Bail must be put in *de novo*.
Skinner 244.

Debt against a *Feme sole* in the Palace Court, who after she had pleaded there married, and then removed the Cause by *Habeas Corpus* into *B. R.* and there pleaded her Coverture in Abatement; the Court said, that if this Matter had been moved on the Return of the *Habeas Corpus*, they would have granted a *Procedendo*, but that now the Plea in Abatement must be held good, for the Proceedings are *de novo*, and they could take no Notice of the Proceedings below. 1 *Salk.* 8.

After Interlocutory Judgment, and before final Judgment a *Habeas Corpus cum Causa* was brought, and before the Return of the Writ the Defendant died, and a *Procedendo* was awarded, because by the Statute 8 & 9 *W. 3. c. 11.* the Plaintiff may have a *Scire facias* against the Executors which he cannot have in another Court. 1 *Salk.* 352.

The Form of a Habeas Corpus cum Causa returnable before the Chief Justice immediately.

Form of Habeas Corpus.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting: We command you that you have the Body of *C. D.* detained in our Prison under your Custody, as it is said, under safe and secure Condu

Condu

Conduct, together with the Day and Cause of his being taken and detained, by whatever Name he may be called in the same, before our Right Trusty and Well-beloved Sir William Lee, Knight, our Chief Justice assigned to hold Pleas in our Court before us, at his Chamber situate in *Serjeants Inn* in *Chancery Lane*, immediately after the Receipt of this Writ, to do and receive all and singular those Things which our said Chief Justice shall then and there consider of him in this Behalf: And have there then his Writ. Witness, &c.

You ingross this Writ upon a 5 s. Stamp'd piece of Parchment, then write a *Fiat* in this Manner;

Middlesex. Let there be a *Habeas Corpus* for G. D. to do and receive, returnable immediately.

Then make a Note for the Office, and carry the Writ to the Signer of the Writs, who will sign the Writ, and keep the Note and the *Fiat* for the Judge to sign. You pay him 6 s. 8 d. in Term-Time, and 7 s. 8 d. in Vacation, which is thus divided;

To the Chief Clerk	—	o	1	8	<i>The Fees.</i>
To the Judge	—	o	4	o	
To the Judge's Clerk in Term	}	o	2	o	
1 s. in Vacation 2 s.					

Then get it sealed, for which you pay 7 d. then you lodge the Writ with the Sheriff *Middlesex.* The Fees are, if the Defendant be charged but with one Action, 9 s. d. viz.

VOL. I. Y Allowing

Allowing the Writ	—	o	4	8
For the Return, if but one Action		o	2	4
If more, 2 s. 4 d. for each Action				
For a Warrant to the Bailiff to				
carry the Prisoner before the	}	o	2	4
Judge				

And if the Defendant be in *Newgate*, then for a Warrant to the Keeper to deliver him to the Bailiff, 2 s. 4 d. more.

Defendant must be charged with some Process of this Court, or cannot be committed. If the Defendant be not charged in Custody of the Sheriff with some Process out of this Court, he cannot be turned over; and therefore in such Case the Defendant must procure some Creditor to sue out a Writ against him in this Court, and lodge it with the Sheriff before he brings his *Habeas Corpus*.

Fees on Commitment at the Judge's Chamber. When the *Habeas Corpus* is returned by the Sheriff, the Bailiff brings the Defendant to the Judge's Chamber, who commits him to the *King's Bench* Prison. You pay To the Bailiff for bringing up } o 10 o the Defendant.

To the Judge's Clerk at the Chambers as follows, viz.

For himself	—	o	4	o
For the Chaplain of the Prison		o	2	o
For the Deputy Marshal	—	o	1	o
For the Clerk of the Papers of				
the Prison	}	o	1	o
For the Porter of the <i>Serjeants</i>				
<i>Inn</i>	—	o	o	6

o 8 6
To

in the Court of King's Bench.

323

To the Tipstaff for carrying the Prisoner over 6 s. 8 d.

For allowing a *Habeas Corpus* to the Palace-Court you pay 4 s. 8 d. and for the Jurat 4 d.

The Form of a Bail-Piece on a Habeas Corpus.

Michaelmas Term in the Twelfth Year of King George the Second.

Middlesex (to wit) A. B. is delivered upon Bail, upon a Habeas Corpus.

To John Doe, of London, Gent.
and
Richard Roe, of the same, Gent.

G. T. }
Attorney.

At the Suit of the Plaintiff in the Plaintiff.

	<i>l.</i>	<i>s.</i>	<i>d.</i>
Duty	0	2	0
Master of the Office	0	4	10
Judge's Clerk in Term 1 s. 2 d. }	2 s. 2 d. }	2	2
In Vacation }		0	0
Porter of Serjeants Inn	0	0	6

Y z

Every

Persons committed to the Custody of the Marshal on Habeas Corpus, to remain 2 Days notwithstanding any other Habeas Corpus.

As to the Stile of inferior Courts.

Cause not to be removed where the Cause of Action does not exceed five Pounds.

Every Person committed to the Custody of the Marshal by Virtue of a Habeas Corpus, shall remain in actual Custody of the Marshal by the Space of two Days next after such Commitment, notwithstanding any other Habeas Corpus from any other Court whatsoever. *Hil. 5 W. 3 M.*

If the Habeas Corpus be to remove a Cause out of an inferior Court, you must learn the Stile of the Court, for which see *Thesaurus Brevium*. The Direction to the Marshalsea Court is, "To the Judges of our Court of our Palace at Westminster, and to each of them, Greeting: To the Court of the Sheriffs of London, To the Mayor, Aldermen and Sheriffs of London, Greeting:

Where the Cause of Action in the inferior Court did not amount to five Pounds or upwards, it was not removeable by a Habeas Corpus, and therefore in such Cases the Defendant used to set up a fictitious Action against himself for a pretended Demand of 5 l. or upwards, and then bring a Habeas Corpus and remove both Causes together, and thereby remove the smallest Actions into the superior Courts; for preventing which Abuses, by Stat. 12 Geo. 2 c. the Judge of the inferior Courts mentioned in Stat. 21 Ja. 1. c. may proceed in such Actions as are therein specified, which appear or are laid not to exceed 5 l. although there be other Actions against the Defendant, wherein the Plaintiff

Plaintiff's Demands shall exceed the said Sum of 5*l*.

Writs of *Habeas Corpus* to remove Causes out of inferior Courts, (except Courts within five Miles of London, as the Sheriff's Court in London, *Marshalsea Court*, &c.) shall be made returnable at a certain Day in Term, and not immediately.

Habeas Corpus to remove a Cause, to be returnable on a Day certain; Except.

And every such Writ, that shall be sued out in *Hilary* or *Trinity* Term, or the Beginning of the Vacation following, shall be made returnable on the first or second Return of the subsequent Term, and if returnable in *Hilary* or *Trinity* Term, ought to be made returnable the first or second Return of those Terms; and if returnable later, any Judge of the Court may grant *Procedendo*, as tending to the Plaintiff's Delay.

Of what Return such Habeas Corpus to be made.

The Form of a Procedendo.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Mayor, Aldermen and Sheriffs of London, Greeting: Although we lately by our Writ commanded you, that you should have the Body of C. D. detained in our Prison under your Custody, as it was said, under safe and secure Conduct, together with the Day and Cause of his being taken and detained, by whatsoever Name the said C. D. might be called in the same, before our Right Trusty and Well-beloved

Y 3

Sir

Sir William Lee, Knight, our Chief Justice assigned to hold Pleas in our Court before Us, at his Chambers situate in *Serjeants Inn* in *Chancery Lane*, immediately after the Receipt of that Writ [as the *Habeas Corpus* was returnable] to do and receive all and singular those Things which our said Chief Justice should then and there consider of him in that Behalf; yet we being now moved with certain Causes in our Court before Us, command you and every of you, that in all Plaints or Suits against the said *C. D.* at the Suit of *A. B.* in our Court, before you, or any of you levied or affirmed, or before you or any of you now depending undetermined, you proceed with what Speed you can in such Manner, according to the Law and Custom of *England*, as you shall see proper; Our said Writ to you thereupon first directed to the contrary in any Thing notwithstanding. Witness, &c.

Special Bail
in Causes re-
moved by *Habeas Corpus*;
Except.

Special Bail is required in all Causes removed by *Habeas Corpus* out of inferior Courts, except the Defendant be an Executor or Administrator, or the Action be for Words or small Trespasses. *Hil. 2. fa. 2.*

Executor shall
not put in Spe-
cial Bail on a
Habeas Cor-
pus, tho' Bail
put in Below.

The Defendant was sued in the Palace-Court as Executor, and there compelled to find Bail according to the Course of that Court: He removes the Cause by *Habeas Corpus*; and the Question was, Whether he should find Special Bail here; and resolved he should not: For tho' it be ge-

nerally used, that when a Cause is removed by *Habeas Corpus* to find Bail in all Cases where Bail is found in the inferior Court, yet this shall not extend to the Case of an Executor where the Cause did not require Special Bail by the Course of the Court, except in Case of a *Devastavit*. But in other Cases where Special Bail is found below, it shall be found here, altho' the Cause of Action be of a less Sum than by the Course of this Court Special Bail is to be found. 1 *Lev.* 268.

Debt in *London* against the Defendant as *Nor an Heir*
 Heir being removed hither, the Question *at Law.*
 was, If the Heir should find Bail here as
 he did in the inferior Court of *London*,
 where they compel all Defendants, Heirs
 or Executors, to find Bail. The Court de-
 nied to hold the Defendant to Special Bail
 in this Case. 2 *Lev.* 204.

Upon the Allowance of any *Habeas Procedendo Corpus*, the Plaintiff may in Term-Time unless Bail in have a Rule for a *Procedendo*, unless good Term within Bail be put in within four Days next af- 4 Days, and ter Notice of the Rule, and in Vacation in Vacation within 6 Days may have a Rule or Warrant for a *Pro-after Notice. Procedendo*, unless good Bail be put in within six Days next after Notice of such Rule or Warrant.

No Bail is to be tendered or put in upon any *Habeas Corpus*, until the *Habeas Corpus*, and Causes for which Bail is to be put in, be returned, to the End it may appear what the Causes are, for which the

Defendant is detained, and Bail may be duly taken, and the *Habeas Corpus* and Bail duly filed. *Mich. 1651, Pas. 29 Car. 2. Hil. 10 W. 3.*

Twenty-eight Days to except against Bail on *Habeas Corpus*.

When Special Bail is put in before any Judge of this Court *de bene esse*, upon a Writ of *Habeas Corpus*, if the Plaintiff shall not except against the Bail within twenty-eight Days after putting in the same, the Bail shall be filed within four Days next after the End of the said twenty-eight Days. *Mich. 16 Car. 2.*

Notice of putting in, or excepting to Bail to be in Writing.

And the like Notice in Writing is to be given of putting in or excepting to Bail on a *Habeas Corpus* as on a *Capi Corpus*.

After Exception, Rule for *Procedendo* within four Days, unless better Bail, whether in Term or Vacation.

And if the Plaintiff except to such Bail put in *de bene esse*, he may have a Rule or Warrant for a *Procedendo*, unless the Defendant shall put in better Bail within four Days after Service of such Rule or Warrant, whether it be in Term or Vacation.

On a Removal out of an inferior Jurisdiction, the Plaintiff is bound to accept the Bail below, except in London.

If a Cause be removed by *Habeas Corpus* out of the *Marshalsea* or any other inferior Court, and the Bail there offer to be Bail to the Action here, the Plaintiff is compellable to take them, because he might, but did not except to them below. *Aliter*, where a Cause comes hither out of London, for the Sufficiency of the Bail there, is at the Peril of the Clerk, and he is responsible to the Plaintiff, so that the Plaintiff

Plaintiff had not the Liberty of excepting against them, and the Clerk is not responsible if they be deficient in this Court, though he was in London. 1 Salk.

97.

If one be brought into this Court by ^{Bail liable to} Habeas Corpus, and puts in Bail, the Bail ^{all Actions in} is liable to all Actions at the Suit of ^{the Return of} the Plaintiff or Plaintiffs mentioned in ^{the Habeas} the Return of the Habeas Corpus, wherein ^{Corpus declared on within} he or they shall declare against the Defendant at any Time within two Terms next after.

Defendant returned in Custody on a ^{Defendant in} Habeas Corpus or Capi Corpus, is not to ^{Custody not to} be discharged until the Bail is per- ^{be discharged} fect- ^{till Bail is} ed. ^{perfected.}

The Record itself is never removed by ^{Record not re-} Habeas Corpus, as it is on a Certiorari, but ^{moved by Ha-} remains below, and therefore if a Cause ^{beas Corpus.} be removed hither by Habeas Corpus, the Plaintiff here must begin de Novo, and de- ^{Plaintiff must} clare against the Defendant as in Custodia ^{declare de} ^{Novo.} Marefcalli. Salk. 352.

The Plaintiff must declare before the ^{Plaintiff must} End of the Second Term, after the Re- ^{declare within} turn of the Habeas Corpus, and the De- ^{two Terms,} fendant will not be bound to plead to any Declaration delivered after that Time.

And where the Defendant has removed ^{Cannot be Non-} his Cause hither by Habeas Corpus, and ^{prossed for} put in Bail, he cannot have a Non-Pros ^{want of a} against the Plaintiff for want of a Decla- ^{Declaration.} ration, if he will not declare, the Plain-
tiff

tiff not being in Court, and the Cause supposed to be removed against his Inclination.

Cause removed from City, &c. where the Judges of Assize seldom go, to be laid in the County wherein the City lies. If a Cause be removed by *Habeas Corpus* out of an inferior Court, lying in any City or Town, where the Judges of Assize seldom go, as *Canterbury, Southampton, &c.* and the Action be Transitory, it shall be laid in the County wherein such City or Town is, as *Kent, Southampton, &c.*

What Time the Defendant has to plead in Hilary or Trinity Term, and the Action in London or Middlesex. If a Cause be removed out of *London or Middlesex, the Marshalsea*, or any other Court within five Miles of *London*, in *Hilary or Trinity Term*, and Bail is put in, and the Plaintiff declares in *London or Middlesex*, and delivers his Declaration six Days before the End of the Term, the Defendant shall plead 3 Days before the *Effoin-Day* of the subsequent Term, that the Plaintiff may enter the Issue if he will;

1 Mod. 1.

but if the Plaintiff does not deliver his Declaration six Days before the End of the Term, the Defendant shall have an Imparance till the next Term.

What Time in these Terms, if the Action in any other County. If a Cause is removed out of any Court, except in *London or Middlesex, the Marshalsea* or other Court within five Miles of *London*, and the Plaintiff does not declare in *London or Middlesex*, but in some other County, and the Plaintiff delivers his Declaration at any Time before the End of these Terms, viz. *Hilary or Trinity*, the Defendant is bound to plead by the Time the Rule is out, that the Plaintiff may try his

his Cause at the Assizes, if he thinks proper; and if the Defendant does not plead by that Time, Judgment may be entered against him.

Upon a *Habeas Corpus* returnable in *Michaelmas* Term, if the Declaration be delivered before *Crastinum Animarum*, in *Easter* Term if delivered before *Mensem Pasche*, and the Action is laid in *London* or *Middlesex*, the Defendant must plead to Trial the same Term. But if delivered after these respective Times, and yet six Days before the End of either of these Terms, the Defendant, wherever the Action is laid, shall plead to enter three Days before the *Effoin*-Day of the subsequent Term; and if not delivered six Days before the End of either of these Terms, the Defendant has an *Impar lance* until the next the Term.

Since the making the Rule of *Trinity* the 5th and 6th of his present Majesty, the Attornies have differed as to their Method of Proceeding, some adhering to the old Practice, and others following that Rule as on a *Cepi Corpus*.

A Plea in Abatement on *Habeas Corpus*, must be pleaded before the Rule for Pleading is out.

If a Prisoner in the *Fleet*, charged with a Declaration of the *Common Pleas*, remove himself by *Habeas Corpus* to the Custody of the Marshal, the Plaintiff must proceed

ing himself to the King's Bench Prison,

How on the
like Removal
from the Mar-
shal to the
Fleet.

How on a Re-
moval before
the Plaintiff
has declared.

to Judgment in the Court of *Common Pleas*, and then may carry him back by *Habeas Corpus ad Satisfaciendum* to charge him in Execution; and so if a Prisoner in the Custody of the Marshal, be charged with a Declaration in this Court, and he removes himself to the Fleet, the Plaintiff must proceed to Judgment in this Court, and then bring the Defendant back by *Habeas Corpus* to be charged in Execution in this Court: But if a Person in Custody on Process issuing out of this Court remove himself to the Fleet by *Habeas Corpus* before the Plaintiff has declared against him; in such Case (as I take it) the Plaintiff must charge him with a Declaration in the Court of *Common Pleas*, and cannot proceed any further in this Court, unless he has a mind to bring the Defendant back into this Court by *Habeas Corpus ad respondendum*.

On such *Habeas Corpus* the Plaintiff's Attorney should indorse the Number of the Judgment Roll.

Of Proceedings against PRISONERS.

Formerly when any Defendant was detained in Custody by *Mesne Process* of this Court for want of Bail, if the Plaintiff did not within two Terms cause the Defendant to be brought up by *Habeas Corpus* and committed, so that he might declare against him in *Custodia Mare-Scalli*, the Defendant might be discharged out of Custody upon Common Bail or Appearance.

But by Statute 4 & 5 William and Mary Stat. 4, 5 W. & M. c. 21. If any Defendant be taken and charged in Custody at the Suit of any Person, upon any Writ or Writs out of any of the Courts at *Westminster*, and imprisoned for want of Sureties for his Appearance, the Plaintiff in such Writ may, before the End of the next Term after such Writ shall be returnable, declare against such Prisoner in the Court out of which the Writ or Writs shall Issue; whereupon such Prisoner shall be taken and charged in Custody, and may cause a true Copy thereof to be delivered to such Prisoner, or to the Gaoler or Keeper of the Prison or Gaol in whose Custody such Prisoner shall be and remain; to which Declaration the said Prisoner shall appear and plead

plead ; but if he shall not appear and plead thereto, the Plaintiff shall in such Case have Judgment, as if the Prisoner had appeared and refused to plead.

To be alledged in the Declaration, in whose Custody such Prisoner is.

That in all such Declarations against such Prisoners, it shall be alledged in the Custody of what Sheriff, Bailiff or Steward of any Franchise, or other Person having Return and Execution of Writs, such Prisoner shall be at the Time of such Declaration, which Allegation shall be as good and effectual, as if such Prisoner was in the Custody of the Marshal of the *Marshalsea*.

Rule of Court made Pas. 5. W. & M.

Upon this Act the Judges of the Court of *King's Bench* made the following Rule of Court. *Pas. 5 W. & M.*

Declaration not to be delivered before Return of Process.

First, That no Copy of a Declaration be delivered to any Prisoner in Custody, before the Day of the Return of the Process upon which the Defendant was taken or charged in Custody.

No Rule to appear and plead till Affidavit made and filed of delivering the Declaration, &c.

Secondly, that no Rule be given for the Defendant in Custody to appear, and plead to any Declaration against him, until an Affidavit be filed with the Clerk of the Rules of the delivering a Copy of such Declaration, and of the Time when, and the Person to whom the said Copy was delivered, and that the Defendant was arrested or charged in Custody by Process out of this Court returnable before the Delivery of such Copy ; and that the Time

Copy of Affidavit to be produced before signing Judgment.

of filing the Affidavit be entered upon the Affidavit by the Clerk of the Rules ; and that a Copy of such Affidavit be produced

to the Prothonotary or Secondary, before the signing the Judgment.

Thirdly, If a Copy of the Declaration be delivered against such Defendant before *Mensem Paschæ* or *Craftinum Animarum*, and Affidavit be made thereof and filed, and the Defendant doth not appear before the End of ten Days after *Easter* and *Michaelmas* Term respectively, Judgment may be entered against him, if Rules have been given; but if he doth appear before the End of ten Days after the Term, he shall imparle until the next Term (unless the Action be in *London* or *Middlesex*) and the Defendant be in Prison within forty Miles of *London* or *Westminster*, then though he doth appear before the Expiration of ten Days after the End of the Term, he shall plead two Days before the *Essoin*-Day of the next Term; and in Default thereof (Rules for Pleading having been given) Judgment may be entered against him as aforesaid.

Declaration delivered before Mensem Paschæ. or Craft. Animar. Defendant to appear in 10 Days after Term; otherwise Judgment. If he does appear, may imparle till next Term. Except in London or Middlesex; and Prisoner within 40 Miles of London; Then to plead 2 Days before Essoin-Day of next Term.

Fourthly, If a Copy of the Declaration be delivered against such Defendant on or after *Mensem Paschæ* in *Easter* Term, or *Craftinum Animarum* in *Michaelmas* Term, or in *Hilary* or *Trinity* Term, and thereupon the Plaintiff gives Rules to appear and answer, then if the Defendant appears two Days before the *Essoin*-Day of the next Term, he shall imparle until the next Term; but if he doth not appear within that Time, Judgment shall be given against him.

If Declaration delivered after Mensem Paschæ. or Craft. Animar. or in Hilary or Trinity Term, if Defendant appears two Days before Essoin-Day of next Term, he imparles to next Term.

Fifthly,

If Declaration delivered before Effoin-Day of the next Term after the Ret. of the Writ, Plaintiff may give Rules the next Term, and Defendant must appear and plead before Expiration thereof.

Fifthly, If a Writ be returnable in any Term, and a Copy of the Declaration has been delivered before the *Effoin-Day* of the next Term, the Plaintiff in such next Term may give Rules to appear and answer; and if the Defendant does not appear and plead upon the Expiration of the Rules, Judgment shall be given against him.

If Declaration not filed before the End of the Term next after Return of the Writ, and Affidavit, &c. Defendant to be discharged on Common Bail.

Sixthly, If the Declaration be not filed before the End of the next Term after the Writ or Process, by which the Prisoner was taken or charged in Custody, is returnable, and Affidavit made and filed in Manner as aforesaid, before the End of twenty Days next after such Term, the Prisoner shall be discharged by Common Bail, signed by one of the Justices of this Court.

Attachment against Gaoler concealing Declaration.

Seventhly, If any Gaoler or Keeper of a Prison, having received a Copy of a Declaration against any Prisoner in his Custody, shall suppress the same, and not deliver it forthwith unto such Prisoner, an Attachment shall be issued against him.

Bill to be filed before Copy delivered.

Note; A Bill or Declaration in Parchment ought to be filed in the Office of the Clerk of the Declarations before a Copy of it be delivered to the Prisoner.

For preventing the Detainer of Prison-
 ers charged by Declarations in the Custody
 of the Marshal of the *Marshallsea* of this
 Court, where the Cause of Action against
 such Prisoners does not amount to ten
 Pounds, It is ordered, that from and af-
 ter the last Day of this Term, no Decla-
 ration whereby any Prisoner shall be
 charged in the Custody of the Marshal,
 shall be sufficient Cause of detaining such
 Prisoner in Custody, unless an Affidavit
 that the Plaintiff's Cause of Action against
 such Prisoner does amount to ten Pounds
 or upwards, shall be first made, and filed with
 the Clerk of the Rules of this Court; and the
 Sum specified in such Affidavit shall be
 indorsed by him upon such Declaration be-
 fore the leaving thereof with the Turn-
 key. *Easter 15 Geo. 2.*

*Declaration not
 a sufficient
 Cause of de-
 taining a Pri-
 soner in Custody
 of the Marshal,
 unless Affidavit
 be made that
 the Plaintiff's
 Cause of Ac-
 tion amounts
 to ten Pounds
 or upwards.*

*Sum to be in-
 dorsed on the
 Declaration.*

I apprehend, that where a Defendant
 in Custody for want of Bail, on *Mesne*
 process issuing either out of this Court, or
 out of the Court of *Common Pleas*, is re-
 moved by *Habeas Corpus* unto the Custody
 of the Marshal, the Plaintiff in the first
 Action when he comes to declare, need
 not make such Affidavit as by this Rule
 is directed; for it will appear by the Re-
 turn of the *Habeas Corpus*, that an Affida-
 vit of the Plaintiff's Cause of Action a-
 mounting to ten Pounds or upwards, was
 made on suing out the Writ, whereupon
 the Defendant was arrested; and there-
 fore this Case not within the Mischief de-

*An Explana-
 tion of this
 Rule offered.*

signed to be prevented by this Rule ; and I suppose the Rule means only such Declarations as come in as new Charges upon Prisoners. *Sed Quære.*

When Prisoner in Custody of the Marshal is to plead. When a Bill is filed against a Prisoner in Custody of the Marshal, if a Copy of it be delivered for him to the Turnkey four

Days exclusive before the End of the Term, a Rule to plead be given, and a Plea demanded, which may be done on the back of the Copy when delivered, the Defendant shall plead as of that Term ; but if the Bill be not filed, and the Copy delivered four Days exclusive before the End of the Term, the Defendant may implead until the next Term.

No Affidavit of delivering Copy of Declaration.

No Affidavit is required of the Delivery of such Copy, as is where the Defendant is in Custody of a Sheriff.

Plaintiff not declaring in two Terms, Defendant may be discharged on Common Bail without Notice.

If any Defendant shall be committed to the Custody of the Marshal of this Court or shall be charged in Custody of the Marshal, or arrested, or committed by Virtue of any Process of this Court to the Custody of any Sheriff or other Officer whatsoever, at the Suit of any Plaintiff, and shall so remain in Custody by two Terms and the Plaintiff shall not declare against such Defendant within that Time, such Defendant after the End of the second Term after such Imprisonment shall be discharged out of the Prison where he shall be so detained, upon filing Common Bail

signed

igned by one of the Justices of this Court, without any Notice to be given to the Plaintiff or his Attorney. *Trin. 2 Geo. 1.*

The Term in which the Writ, whereon *The Term in which the Defendant was arrested, is returnable, which the Process is returnable to be accounted one of the Terms.* although not returnable until the last Day of the Term, is to be accounted as one of the two Terms, as is also the Term wherein the Defendant was committed to the Custody of the Marshal, although not committed till the last Day of a Vacation.

To discharge a Prisoner on this Rule, *How to discharge a Prisoner for want of Declaration.* you must obtain a Certificate from the Clerk of the Declarations, that no Bill is filed in his Office against the Defendant,

and a Certificate of the Causes wherewith he stands charged, from the Clerk of the Papers of the *King's Bench* Prison, if in the Custody of the Marshal, and from the Gaoler or Keeper of the Prison, if in the Custody of the Sheriff or other Officer. And Notice is required to be given to the Plaintiff, and an Affidavit must be made thereof, if the Plaintiff or his Attorney does not attend to oppose or consent to his discharge.

If a Plaintiff shall declare against a Defendant remaining Prisoner as aforesaid, in the Custody of the Marshal of this Court, any Sheriff or other Officer, and shall proceed to Trial, or obtain Judgment within three Terms next after the delivering such Declaration (the Term in which the Declaration shall be delivered

being one) such Defendant shall be discharged out of Custody on filing Common Bail, Notice being first given to the Plaintiff or his Attorney, and an Affidavit thereof made, if the Plaintiff or his Attorney does not attend, and shew Cause against the Discharge. *Trin. 2 Geo. 1.*

May be discharged if not charged in Execution in 2 Terms after Judgment.

Carth. 469.

If any Plaintiff shall obtain Judgment against any Defendant Prisoner, and shall not charge such Defendant so remaining in Prison in Execution upon the Judgment so obtained within two Terms next after obtaining such Judgment (the Term wherein Judgment shall be obtained to be reckoned as one) the Defendant may obtain his Discharge in like Manner, as for not proceeding to Trial or Judgment. See *Trin. 2 Geo. 1.*

What Notice to Plaintiff on discharging a Prisoner.

In discharging a Prisoner in either of these Cases, the Notice to be given the Plaintiff is a Judge's Summons to attend, and shew Cause why the Defendant should not be discharged for the Plaintiff's not declaring, or not proceeding, as the Case is.

How to discharge him out of the Custody of the Marshal.

If the Prisoner be in Custody of the Marshal, he must get a Certificate from the Clerk of the Common Bails, that Common Bail was filed with him, by Order of one of the Judges, on which the Marshal will discharge him without a *Supersedeas*.

How out of the Custody of a Sheriff.

But if the Prisoner be in Custody of a Sheriff or other Officer, he must sue a Writ of *Supersedeas*, for signing which the Bail Piece signed by one of the Judges is a Warrant to the Officer with whom you leave

it, and he delivers it over to the Clerk of the Common Bails to be filed.

If a Defendant surrenders himself after Judgment in Discharge of his Bail, the Plaintiff must charge him in Execution in two Terms following (the Term in which he surrenders being one) or he shall be discharged upon Common Bail, as if in Custody for want of Bail upon an Action, unless Proceedings be stayed by Writ of Error or Injunction.

Defendant after Judgment surrendering in Discharge of Bail, to be charged in Execution in two Terms; Except Writ of Error or Injunction.

If a Man be in Custody on any Criminal Matter, he cannot be charged at the Suit of a Subject in any Action without Leave of the Court. 1 Lev. 146. Salk. 354. But if he is charged in Execution, he ought not to be discharged. Raym. 58. 1 Sid. 90. 3 Danv. 34. V. Comb. 329.

Prisoner on Criminal Account not to be charged with Civil Action.

If any Defendant, being in the Custody of the Marshal of this Court upon Mesne Process, shall be taken and detained in the Custody of any Sheriff on an Escape Warrant for escaping out of the Marshal's Custody, the Plaintiff in such Action shall declare against the Defendant in Custody of such Sheriff, before the End of the second Term after his being so taken; otherwise the Defendant may be discharged by Superedeas. Trin. 6 Annæ.

Prisoner on Mesne Process taken on Escape Warrant must be declared against in two Terms.

Middlesex, **E**DWARD Owen, Gentleman, complains of Hugh Hughes, Gentleman, being in the Custody of the Sheriff of the County of Middlesex, by

B. R. Declaration for an Assault against a Prisoner in Custody of the Sheriff of Middlesex.

Lilly's En-
trys 436.

Stat. 4, 5 W.
& M. c. 21.

Pract. Regr.
359, 366,
231, 596 602.

by virtue of a Precept of our Lady the Queen, called a Bill of *Middlesex*, issuing out of the Court of our said Lady the Queen, for that, that he the said *Hugh* on the twenty-fourth Day of *August* in the twelfth Year of the Reign of our Sovereign Lady *Anne*, now Queen of *Great Britain*, &c. with Force and Arms, &c. at *Hampstead* in the County of *Middlesex*, made an Assault upon the said *Edward*, and then and there beat, wounded, and evilly treated the said *Edward*, so that his Life was greatly despaired of, and then and there did other Injuries to him against the Peace of our said Lady the present Queen, and to the Damage of the said *Edward* of one hundred Pounds: And thereupon he brings Suit, &c.

A. B. for the Plaintiff.

Defendant in the Custody of the Sheriff
of *Middlesex*.

Pledges of Prosecuting { *John Doe*,
 Richard Roe.

In the Queen's Bench.

Edward Owen, Plaintiff

A N D

Hugh Hughs, Defendant

*Affidavit of
the Delivery of
the Declara-
tion.*

H. P. of the Parish of, &c. Gentleman
maketh Oath, that he this Deponent did
deliver a Copy of the Declaration hereunto
annexed

annexed to the Turnkey of *Newgate* against the Defendant *Hughes* in Custody on the 24th Day of *October* last past; and this Deponent has since been informed by one of the Keepers of the said Prison, that he did the same Day deliver the said Declaration to the said Defendant *Hughes*.

Proceedings on Scire Facias against Bail, and to revive Judgments, &c.

NO *Scire Facias* lies against the Bail, *No Sci. Fa.* (except in Error) until a *Non est In-* against Bail *venius* be returned upon a *Capias ad Satis-* until a *Ca Sa.* *faciendum* against the Principal, and the *returned and* Writ be filed. *filed.* *Lutw. 1273.*

If a *Ca. Sa.* be sued out against the Prin- *May be filed* cipal and returned, 'tis sufficient to war- *after Sci. Fa.* rant a *Sci. Fa.* against the Bail, though it be not filed, and may be filed at any Time afterwards. *1 Lev. 225.*

The Reason is because the Bail are not *The Reason* bound to render the Principal till they know *Bail not bound* what Execution the Plaintiff will chuse, whe- *to surrender* ther he will chuse to have his Body; which *before Ca. Sa.* he makes appear by suing a *Capias*; for he might have sued an *Elegit*, or *Fi. Fa.*

If there be no *Ca. Sa.* sued out, returned *If no Ca. Sa.* and filed, the Bail may plead it, and be *Bail may plead* discharged; but the Court will not quash *it, and be dis-* the *Scire Facias* on Motion. *charged.*

Judgment
with Stay of
Execution, tho
Ca. Sa. may
be sued out to
warrant a
Testatum,
yet it may not
to warrant a
Sci. Fa. a
gainst the Bail.

If a Defendant gives Judgment with Stay of Execution, until a future Day, the Plaintiff may notwithstanding sue forth a *Ca. Fa.* or *Fi. Fa.* directed to the Sheriff of the County where the Action is laid, and returnable before that Day, in order to make out a *Testatum* against the Defendant; but no such *Ca. Sa.* shall be sued forth to warrant a *Scire Facias* against the Bail, unless by Special Agreement, because it is to the Prejudice of a third Person.

Ca. Sa. to lie
four Days in
the Sheriff's
Office.

A *Capias ad Satisfaciendum* against the Principal, in order to charge the Bail, must lie four Days exclusive in the Sheriff's Office. *Salk.* 599.

To have eight
Days between
Teste and Re-
turn.

There ought to be eight Days between the Teste and Return of the *Capias ad Satisfaciendum* against the Principal. *Salk.* 602.

Defendant dy-
ing before Re-
turn of Ca.
Sa. Bail dis-
charged.

If the Defendant dies after the *Ca. Sa.* and before the Return of it, the Bail is discharged, *per Jones* 1 *Jo.* 136. but they must plead it.

Recognizance
forfeited on
Return of Non
est Inventus
on Ca. Sa.

Upon a *Non est Inventus* returned upon the *Ca. Sa.* the Recognizance is forfeited, because there was a Default in the Party; and though it is usual to render the Body upon the *Scire Facias*, yet that is of Grace, not of Necessity; and the Death of the Principal at the Time of the *Scire Facias* brought is not material, if he were alive when the *Ca. Sa.* was returned. *Cro. Jac.* 165. *pl.* 2.

Death of Prin-
cipal at Time
of Sci. Fa.
brought not a-
vailable.

But where the Principal has died after a *Principal dying after Ca. Capias ad Satisfaciendum* returned, and before it was filed, the Court on Motion *Sa. returned, and before filed,* stayed the filing of it in Favour of the *Court stayed the filing it.* Bail.

Before you make out a *Scire Facias* against the Bail, see that the Declaration be entered upon the Rolls at *Westminster* of the same Term the Declaration was of, with an *Adhuc de Termino, &c.* And after the Declaration is entered *verbatim*, you enter this Defendant's Appearance, and the Recognizance after it, thus:

And the said C. D. by R. R. his Attorney, comes and defends the Force and Injury, when, and so forth.

And thereupon *E. F. G. H.* (naming the Bail with their Additions) come into the Court of our Lord the King, before the King himself, at *Westminster*, in their proper Persons, and became Pledges and Manucaptors, and each of them became Pledge and Manucaptor for the said Defendant, that if it should happen that the said Defendant should be condemned in the Plea aforesaid, then the said Manucaptors granted, and each of them did grant, that as well the said Debt, as all such Damages as should be adjudged to the said Plaintiff in that Behalf, should be made of their and each of their Lands and Chattels, and to be levied to the Use of the said Plaintiff, if it should happen that the said Defendant should not pay the said Debt and Damages to the said Plaintiff, or render himself on that

How Recognizance to be entered on the Roll.

Condition of it.

that Occasion to the Prison of the Marshal of the *Marshalsea* of our Lord the King, before the King himself.

In what
County Sci.
Fa. against
Bail should
issue. 3 Danv.
313, 314

On a Recognizance in the Court of King's Bench, the Action or *Scire Facias* must always be brought in *Middlesex*. *Salk.* 564.

On a Recognizance taken in the King's Bench the *Scire Facias* must be brought in *Middlesex*; for the Recognizances there are not obligatory by the Caption, but by their being entered of Record in the Court; otherwise in the Common Pleas. *Salk.* 600. 659. V. *Hob.* 195, 196. *Brownl.* 69. S. C. *Moor* 883. S. C. *Styl. R.* 9.

On Recogni-
zance taken by
Commissioner.

On Recogni-
zance on a
Writ of Error.

How Sci. Fa.
against Bail
on Writ of Er-
ror to be return-
able.

By Original
15 Days be-
tween Teste
and Return of
each Sci. Fa.

If Bail be taken by a Commissioner in the Country, the *Scire Facias* may be sued out into *Middlesex*, or the County where taken. *Lutw.* 1287. But in case of a Recognizance entered into by Bail, on a Writ of Error, if it be entered to be taken at a Judge's Chambers in *London*, the *Scire Facias* must be sued into *London*.

If a *Scire Facias* be brought against Bail upon a Recognizance on a Writ of Error generally, without expressing the Action or the Condition of the Recognizance, then the *Scire Facias* must be returnable on a general Return *Ubicunque*; but if the Action and the Condition of the Recognizance be set forth in the *Scire Facias*, and it appears to be by Bill, then the *Scire Facias* must be returnable at a Day certain in Court. *Lilly's Practical Reg.* 2 Vol. 499.

Every *Scire Facias* by Original ought to have fifteen Days inclusive between the

Teste

Teste and the Return, unless dispensed with by Act of Parliament.

First *Sci. fa.* teste 24 Oct. returnable *Lun.* Of the Teste
prox. post. Mens. Mich. (31 Oct.) *Alias Sci. fa.* and Return of
 Teste 31 Oct. returnable *Lun. prox. post. Crum.* Sci. Fa. by
Animar. (7 Nov.) Bill.

Obj. That between the Teste of the first Writ, and Return of the last, there were not fifteen Days exclusive of the Days of the Teste and Return.

Ans. There are eight Days inclusive between the Teste and Return of each Writ.

The second Writ must always bear Teste upon the same Day on which the first was returnable, and therefore of Necessity that Day must be reckoned twice.

No Objection can be made to the Writs singly, therefore if each Writ be good as it stands alone, the putting them together shall not make them irregular by a joint Computation of the Time. *Carth.* 468. V. T. *Jones* 228.

If the Proceedings are by Bill, fifteen Days inclusive between the Teste of the first *Scire Facias* and the Return of the last are sufficient. *Salk.* 599.

By Bill 15 Days between Teste of first and Return of last Sci. Fa.

Each *Scire Facias* should have seven Days between the Teste and Return, and not the ten or eleven, and the other four or five.

But in this Case, by Bill, if one *Scire Facias* only issue, and a *Scire Feci* be returned, the Time between the Teste and Return of the *Scire Facias* is not settled to any certain Number of Days, but must lie four Days exclusive in the Sheriff's Office before the Return.

But if one Sci. Fa. only issue, no Time limited between Teste and Return.

Upon

No Alias Sci.
Fa. to issue
forth until the
first shall be
returnable.

Upon the issuing of any Writ of *Scire Facias* upon any Cause here in Court, no Writ of *Alias Scire Facias* shall issue thereupon, until the first Writ is returnable; and if any Writ of *Alias Scire Facias* shall issue to the contrary, then such Writ of *Alias Scire Facias* shall be void. *Trin. 8 W. 3. Salk. 599. 6 Mod. 86.*

Alias Sci. Fa.
to bear Teste
the Day of the
Return of the
first; Except

Every Writ of *Alias Scire Facias* should bear Teste the Day of the Return of the first, *Salk. 599.* unless it be a *Scire Facias quare Executionem non* on a Writ of Error; in which Case it has been held not to be necessary.

The Form of a Scire Facias against Bail.

Sci. Fa. a-
gainst Bail by
Bill in Debt.

In Debt.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting: Whereas *A. B.* lately in our Court, before us at *Westminster*, by Bill without our Writ, and by the Judgment of the same Court, recovered against *C. D.* (add his Addition and the *Alias Dict'* if any) one hundred Pounds of Debt, and also seven Pounds ten Shillings for his Damages, which he sustained as well by Occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended; whereof the said *C. D.* was convicted, as appears to us of Record; and

although

Although Judgment be thereupon given,
yet Execution of the said Debt and Dama-
ges still remains to be made to him: And
whereas *E. F.* and *G. H.* [naming the Bail
with their Additions] heretofore, *to wit*, of
the Term of Saint *Michael* in the fourth
Year of our Reign, in our said Court be-
fore us at *Westminster* came personally, and
became Pledges and Bail, and each of them
by himself became Pledge and Bail for the
said *C. D.* That if it should happen the said
C. D. should be condemned in the Plea afore-
said, then they the said Bail granted, and
each of them for himself did grant, that as
well the said Debt, as all such Damages,
Costs and Charges as should be adjudged
to the said *A. B.* in that Behalf, should be
made of their and each of their Lands and
Chattels, and to be levied to the Use of
the said *A. B.* if it should happen that the
said *C. D.* should not pay the said Debt and
Damages, Costs and Charges to the said
A. B. or should not render himself on that
Occasion to the Prison of the Marshal of
our *Marshalsea* before us: Nevertheless the
said *C. D.* has not as yet paid to the said
A. B. the said Debt and Damages, Costs
and Charges, nor surrendered himself to
the Prison of the Marshal of our *Mar-*
shalsea before us; as we have been given to
understand from the Information of the
said *A. B.* in our Court before us; where-
upon the said *A. B.* hath humbly intreated
us, that he may have a proper Remedy in
his Case; and we being willing that what
is

is just should be done on this Occasion, command you, that by good and lawful Men of your Bailiwick you make known to the said *E. T.* and *G. H.* that they be before us at *Westminster*, on next after to shew if any thing they have or know to say for themselves, why the said *A. B.* ought not to have his Execution against them, according to the Force, Form and Effect of the said Recognizance, if it shall seem expedient, &c. and further to do and receive all and singular those Things which our said Court before us shall then and there consider of them in this Behalf; and that you have there then the Names of those by whom you shall make known to them, and this Writ. Witnesses, &c.

Anthony and Bigge.

In Case.

If your Judgment be in case on Promise, the Recital of it in the *Scire Facias* must be thus; "Recovered against *C. D.* one hundred Pounds for his Damages which he sustained, as well by occasion of the not performing certain Promises and Undertakings lately made by the said *C. D.* to the said *A. B.* as for his Costs and Charges by him about his Suit in that Behalf expended, &c." And the rest of the *Scire Facias* must be agreeable by omitting the Word *Debt* throughout.

In Trespass.

If in Trespass, say, "Recovered against *C. D.* one hundred Pounds for his Damages which he sustained, as well by Means of a certain Trespass lately done by

by the said C. D. to the said A. B. as
for his Costs, &c."

Scire Facias's by Original are made out Sci. Fa. by
Original made
out by Filacer.
by the Filacer of the County.

The *Alias Scire Facias* differs from the *Alias Sci. Fa.*
first in nothing, except the *Teste* and Re-
turn, and by adding after the Words, com-
mand you, these Words, *viz.* As we have
heretofore commanded you.

You make out a Note or *Præcipe* for the
Office, and pay the Signer of the Writs
s. 8 d. for signing this Writ, and the
Sealer 7 d. for sealing it.

The first *Scire Facias* against Bail ought How Sci. Fa.
ought to bear
Teste.
to bear *Teste* the Day of the Return of the
Ca. Sa. and the second *Scire Facias* the Day
of the Return of the first.

Every Writ of *Scire Facias*, whereon a First Sci. Fa.
if Nihil, to be
left sometime
before the Re-
turn.
Nihil is returned, ought to be delivered to
the Sheriff, or left in his Office sometime
before the Return. *Easter 5 Geo. 2.*

And every second, or *Alias Scire Facias*, Second to be
left 4 Days
exclusive be-
fore its Re-
turn.
ought to be delivered to the Sheriff, or left
in his Office four Days exclusive before its
Return. *Same Rule.*

And every *Scire Facias*, whereon the De- Sci. Fa. if Sci.
Feci returned,
to be left four
Days exclusive
before the Re-
turn.
fendant is summoned, and a *Scire Feci* is
returned, ought to be delivered to the She-
riff, or left in his Office, four Days exclu-
sive before the Day of the Return. *Same*
Rule.

But no Time is prescribed for warning No Time fixed
for warning
Defendant.
the Defendant before the Return of the
Writ:

Writ: If he is summoned the Day before, or even on the Day of the Return, it is sufficient.

Time when Sci. Fa. left to be indorsed by Sheriff. The Sheriff ought to indorse on every *Scire Facias* the Day of the Month and Year on which it is delivered to him, or left in his Office. *Easter Term 5 Geo. 2.*

Rule to be given on a Sci. Feci or two Nihils. At the Return of the second Writ of *Scire Facias* (or of the first, if a *Scire Feci* be returned) you must give a Rule with the Clerk of the Rules for the Defendant, or Bail, as the Case is, to appear, and then award the *Scire Facias* on the Roll.

Entry on the Roll of two Scire Facias against Bail, and Judgment by Default.

Award on the Roll of two Sci. Facias's against Bail, and Judgment by Default. Our Lord the King sent to the Sheriff of *Middlesex* his Writ close in these Words, *wit, GEORGE the Second, &c.* (insert the whole Writ *verbatim* to) Witness *Sh* *William Lee, Knight, at Westminster,* the

Day of in the Year of our Reign: At which Day the aforesaid *A. B.* in his proper Person came before our Lord the King at *Westminster*, and the Sheriff, *to wit,* (naming him) Sheriff of the said County of at that Day returned, that the said *C. D.* and *E. F.* had nor had either of them, any thing in the Bailiwick where or by which he could make known to them, or either of them; neither were they, nor was either of them, found

Return Nihil.

the same; and the said *E. F.* and *G. H.* came not, nor did either of them come: Therefore as before, It is commanded to *Second Scire* the Sheriff, That by Good, &c. he make *Facias.* known to the said *E. F.* and *G. H.* that they be before our Lord the King at *Westminster*, on next after to shew in Form aforesaid, if, &c. and further, &c. The same Day is given to the said *A. B.* there, &c. At which Day the aforesaid *A. B.* came in his proper Person before our Lord the King at *Westminster*; and the said Sheriff returned [*as before*] and the said *Nihil re-* *E. F.* and *G. H.* although at that Day so-*turned.* *demnly* demanded, came not, nor did either of them come, but made Default. It is *Judgment.* therefore considered, that the said *A. B.* have his Execution against the said *E. F.* and *G. H.* of the Debt and Damages aforesaid, [*as the Case is*] according to the Force, Form and Effect of the said Recognizance, &c.

Where two Writs of *Scire facias* issue, *How Sci. Fa's* returnable in different Terms, the first must *of different* be entered of the Term wherein it is return-*Terms to be* able, and an Award of the Second is suffi-*entered.* cient, without setting it forth at length.

If the Bail appear, you deliver a Decla-*How if Bail* tion on double Penny Stamp, give a Rule *appear.* to plead, and demand a Plea, as in other Cases.

The Declaration is in this Manner:

Michaelmas Term [as the Term is] in the
Twelfth Year of King George the Se-
cond.

Declaration on Middlesex,
Sci. Fa. to wit.

OUR Lord the King sent to the Sheriff of Middlesex his Writ close in these Words, *to wit*, George the Second, by the Grace of God, [and for the whole Entry as before *verbatim*, to the Return inclusive, of that Writ to which the Bail appear] And the said *E. F.* and *G. H.* at that Day having been solemnly demanded came by *R. R.* their Attorney; upon which the said *A. B.* prays that Execution may be adjudged to him of the Debt and Damages aforesaid, according to the Form, Force and Effect of the said Recognizance, &c.

Proceedings to
stay against
Bail till De-
termination of
Writ of Error
upon the Bail's
Undertaking,
&c.

After a Writ of Error is brought on the Judgment in the Original Action, the Court will stay the Proceedings upon a *Scire facias* against the Bail, until the Determination of the Writ of Error, upon the Bail's undertaking to render the Defendant to the Custody of the Marshal, or pay the Money recovered, if the Judgment be affirmed, within 4 Days next after the Affirmance thereof, and likewise undertaking to bring no Bill in Equity. *Myer and Arthur, Pas. 8 Geo. 1.*

Bail in Original Action not
liable to Costs
in Error.

The Bail in the original Action, upon a Writ of Error brought, are not liable to the Costs upon the Affirmance of the Judgment.

For-

Formerly, where the Plaintiff recovered a greater Sum than was laid in the Action, the Bail was not chargeable *in ista Actione*.

Salk. 102. But now where the Plaintiff declares for, or recovers a greater Sum than is expressed in the Process on which he declares, the Bail shall not be discharged, but be liable for so much as is sworn to and endorsed on the said Process, or for any lesser Sum which the Plaintiff in such Action shall recover. *Paſ. 5 Geo. 2.*

If an Action be by Original sued out in London, and Bail put in, and the Declaration laid in another County, though it is good against the Defendant; yet his Bail are discharged, and not liable to a *Scire facias*. *3 Lev. 235, 245.*

Bail may take up their Principal even on a Sunday, and confine him till the next Day, and then render him; for the Entry *Traditur in Ballium, &c.* and the doing of on a Sunday is no Service of Process, but rather like the Case where a Sheriff arrests by Virtue of a Process of Court on a Saturday, and the Party escapes, he may take him on a Sunday, for that is only a Continuance of the former Imprisonment. *6 Mod.*

Though upon a *Non est inventus* returned the *Capias ad Satisfaciendum* against the Principal, the Bail's Recognizance is forfeited in Strictness of Law; yet if the Defendant renders himself, or be surrendered to his Bail, at any time before the Return of the second *Scire facias*, or of the first

where a *Scire feci* is returned, or on the very Day of the Return *sedente Curia*, the Court will *ex Gratia* stay Proceedings.

Action on Recognizance of Bail.

Upon a *Non est Inventus* returned on the *Capias* against the Principal, the Plaintiff brought Debt upon the Recognizance, and the Bail pleaded a Render before the Return of the *Latitat*, i. e. a *Latitat* actually sued out and entered. *Et per Cur.* Though this cannot be pleaded, yet the Plaintiff shall not by this new Course prevent the Grace of the Court. We will allow a Render in this Case on an Action of Debt, as well as a *Scire facias*, and that at any time before the Return of the *Latitat*, and perhaps may enlarge the Time. 1 Salk. 101. V. 2 Show. 79.

What Time the Bail, when an Action brought against them on the Recognizance, shall have to render the Defendant's Body in Discharge of themselves.

And it was soon afterwards ordered, That if any Person or Persons being Bail here in Court for any Defendant, in any Action whatsoever, shall be impleaded by Action of Debt upon the Recognizance: Such Person or Persons shall have Leave to render the Defendant to the Custody of the Marshal of this Court, in Discharge of his Bail by the Space of eight Intire Days, in full Term, next after the Return of the Writ of *Latitat*, or other Process sued out against such Bail, and upon Notice thereof given to the Plaintiff or his Attorney, all further Proceedings against the Bail on the Recognizance shall cease. *Trin. 1 Anne.*

Whereas by the Rule of this Court Actions of Debt upon any Recognizance of Bail on Mesne Process, the Bail are

low

gave eight Days in full Term after the Return of the Process sued out and served upon any of them to surrender the Defendant in the original Action for the discharging him or themselves from such Recognizance: And whereas by the Course of the Court, the Plaintiff suing out a Writ in a Plea of Trespass may declare in any Action he thinks fit, which may be a Surprize on such Bail: This Court doth there-

In Writ upon Recognizance of Bail, Accetiam bille to be inserted.

fore order, that from and after the last Day of this Term in all such Writs of Process to be sued out of this Court upon any such Recognizance of Bail after the Words *in a Plea of Trespass*, there shall be inserted the following Clause; *And also to a Bill of the said Plaintiff against the said Defendant in a Plea of Debt upon Recognizance according to the Custom of our Court before us to be exhibited*, otherwise the Defendant or his Attorney shall not be bound to accept of Declaration in Debt upon such Recognizance. *Easter 15 Geo. 2.*

Or Def. not bound to accept Declar. on Recognizance.

Debt on a Recognizance of Bail, Plea no *Principal sur-* *a. Sa. Replication a Ca. Sa. Demurrer.* But rendered before the Court on Motion being informed, that the Defendants had surrendered the Principal before the Return of the *Latitat*, ordered Proceedings to be stayed, and an *and Demurrer.* *Return of Latitat, Proceedings stayed after Plea, Repl.* *etoneretur* to be entered upon the Bail-
ce, notwithstanding the Plea, Replication and Demurrer before the Motion.
rth. 516.

Notice to be given the Plaintiff's Attorney, of Defendant's surrendering in Discharge of his Bail.

Where any Defendant in an Action depending in Court shall be rendered to the Custody of the Marshal in Discharge of his Bail, the Attorney for such Defendant shall immediately give Notice of such Surrender to the Attorney for the Plaintiff, and make Oath thereof before the Bail-piece shall be delivered to be filed, or be discharged; otherwise such Render shall be void. *Trin. 1 Annæ.*

At what Time Bail may surrender Principal, though Notice be not given to the Plaintiff.

But *Mich. 3 Annæ, per Cur.* If Bail surrender the Principal at or before the Return of the second *Scire faciās*, it is good though there be not immediate Notice of it to the Plaintiff, for the End of the Notice in that Case is Two-fold: One that the Plaintiff may, if he pleases, charge him in Execution; the other, that he be at no further Trouble or Charge in proceeding against the Bail; but if through want of Notice he is at further Charge against the Bail, that shall not vitiate the Surrender, but yet the Bail shall not be delivered till they pay such Charges. *6 Mod. 238.*

How upon a Person's rendering himself into Custody in Discharge of his Bail in Court, or before a Judge, the Redditi, &c. is to be kept.

Where any Person shall render himself in Court, or before one of the Judges of the Court, in Discharge of his Bail, or shall be brought upon any Writ of *Habeas Corpus* into Court, or before one of the Judges of the Court, in order to be committed to the Custody of the Marshal of the Court, [as he may be in Discharge of his Bail] the Render-piece or Writ of *Habeas Corpus* with the Return thereof, shall remain with the Secondary of the Court, or Clerk of the

the Judge before whom such Person shall be rendered or brought, to be filed; and a Copy or Note only of such Render or Return of the Writ of *Habeas Corpus*, under the Hand of such Judge, or the Secondary, shall be delivered to the Marshal at the Time of committing such Person to his Custody; and such Copy or Note shall be made by the Person so rendering himself, or prosecuting such Writ of *Habeas Corpus*, or by his Attorney on his Behalf. *Trin. 3 Anna.*

As to Notice to the Marshal, see Case *Notice to the Marshal.*
Walton against Sutton, Salk. 272.

As to Rendering before a Judge, *per Cur. Surrender* after Ca. Sa. If at any Time after the Return of the *Capias*, the Bail surrender the Principal at a Judge's Chamber, and he thereupon is committed to the Tipstaff, from whom he escapes or is rescued, that will not be a good Surrender, because it is Indulgence to the Bail to surrender after a *Capias* returned; *secus* if it be before a *Capias* returned; for to surrender before or at the Return of the *Capias* is Matter of Right. *6 Mod. 238.*

It is usual to make an Entry of the Render in the Marshal's Book, kept in the King's Bench Office. *Render to be entered in the Marshal's Book.*

If Notice of the Render has been given, and an Affidavit made thereof, and the Bail-piece discharged by the Secondary and filed, no *Scire Facias*, or other Process, ought to be sued out against the Bail. *After Render no Scire facias against Bail.*

But if the Bail-piece be filed without being first discharged by the Secondary, the Bail is liable. *If no Exoneretur entered, Bail liable.*

Bail does remain liable, although the Defendant be actually in Prison. See *Williams and Williams, Salk. 98.*

Judgment by Default on Sci. Fa. against Bail; though Principal was in Execution, no Relief by Motion, Bail should have pleaded it. The Principal was in Execution, and a *Committitur* entered; and after a *Sci. Fa.* was brought, and two *Nibils* returned against the Bail, and Judgment upon the *Scire Facias*; and now they come and move to set it aside; but the Court would not, it being the Act of the Court, and the Party should have come and pleaded it upon the *Scire Facias.* *Skinner 120.*

Where several Defendants, tho' Plaintiff takes one in Execution, that don't discharge the Bail as to the rest. *Scire Facias* against the Defendant as Bail for *A. B. C.* and *D.* the Defendant pleads, that before the Return of 2d *Sci. Fa.* the Plaintiff took *A.* in Execution, and still detains him. Demurrer. Argued *pro Def.* that *Quer.* having taken one of the Principals in Execution, had thereby disabled the Bail to render him, and therefore discharged him as to all the rest. *Cur' contra.* The Bail have undertaken to bring in all four Principals, and therefore tho' the Plaintiff hath taken one, this does not discharge the Bail as to the other three, for they ought, as they took upon them, to bring in all four. 2 *Lev.* 192. 1 *Ventris 315.*

The Sci. Fa. against Bail be joint, Execution may be several. *Sci. Fa.* against *Fane* and *Barker*, Bail of *Barrel*, Judgment thereon, and a *Ca. Sa.* against *Fane* only taken out. *Per Cur'* Though the *Sci. Fa.* was joint, yet the Execution may be several: And note though the Recognizance be to levy it *de Terris & Catallis*, yet Execution by the Body is good by the Law and Usage of this Court. 1 *Lev.* 225. A. B.

And against the Body.

A. B. against the Bail of C. D.

Michaelmas Term 12th King George
the Second.

Middlesex, OUR Lord the King sent to Scire facias
to wit. the Sheriff of *Middlesex* his against Bail on
Writ close in these Words, to wit, George a Recogni-
the Second, by the Grace of God, of Great zance in Case.
Britain, France and Ireland King, Defender Carth. 403.
of the Faith, &c. To the Sheriff of *Middle-*
sex Greeting : Whereas A. B. lately in our
Court before Us at *Westminster*, by Bill,
without our Writ, and by the Judgment
of the same Court, recovered against C. D.
sixty and six Pounds for his Damages which
he sustained, as well by Means of the not
performing certain Promises and Under-
takings lately made by the said C. D. to
the said A. B. As for his Costs and Charges
by him about his Suit in that Behalf ex-
pended, whereof the said C. D. was con-
victed, as appears to us upon Record ; and
now on the Behalf of the said A. B. in
our said Court before Us, we have been
informed, that although Judgment be
thereupon given, yet Execution of the said
Damages still remain to be made to him ;
And whereas also E. F. of &c. G. H. of &c.
I. K. of &c. L. M. of &c. N. O. of &c.
P. Q. of &c. R. S. of &c. and T. U. of &c.
heretofore, to wit, of the Term of St. Hi-
lary in the twelfth Year of our Reign, in
our same Court before Us at *Westminster*
personally

personally came, and became Pledges and each of them by himself became Pledge for the said *C. D.* That if it should happen that the said *C. D.* should be condemned in the said Action, then they the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* granted, and each of them by himself granted, that all such Damages, Costs and Charges, as should in that Behalf be adjudged to the said *A. B.* should be made of their and each of their Lands and Chattels, and be levied to the Use of the said *A. B.* if it should happen that the said *C. D.* should not pay the said Damages, Costs and Charges to the said *A. B.* or should not render himself on that Occasion to the Prison of the Marshal of our *Mar-shal-sea* before Us: Nevertheless the said *C. D.* has not yet paid the said Damages, Costs and Charges to the said *A. B.* nor surrendered himself on that Occasion to the Prison of the Marshal of our *Mar-shal-sea* before Us, as on the Information of the said *A. B.* in our said Court before Us we have been given to understand; whereupon the said *A. B.* hath prayed Us, that a proper Remedy may be provided for him in this Behalf; and we, being willing that that which is just should be done in this Case, command you, that by good and lawful Men of your Bailiwick, you make known to the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* that they be before Us at *Westminster* on *Monday* next after three Weeks from the Day of *St. Michael*

cha

chacl, to shew, if they have or know any thing to say for themselves, why the said *A. B.* ought not to have his Execution against them the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* of the Damages aforesaid, according to the Force, Form and Effect of the said Recognizance, if it shall seem expedient, &c. and further to do and receive all and singular those Things which in our said Court before Us shall then and there be considered of them in this Behalf: And have there then the Names of those by whom you shall make known to them, and this Writ. Witness Sir *William Lee*, Knight, at *Westminster*, the twenty-first Day of *June* in the thirteenth Year of our Reign. At which Day, before our Lord the King at *Westminster*, the said *A. B.* came in his proper Person, and the Sheriff of *Middlesex*, to wit,

and Sheriff of the said County of *Middlesex*, returned, That *Return of the Sheriff.*
the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* had nothing nor had *Nihil.*
either of them any thing in his Bailiwick, where or by which he could make known to them, or either of them; neither were they, nor was either of them, found in the same, and they came not, nor did either of them come: Therefore, as before, it is *Alias awarded.*
commanded to the Sheriff, that by good and lawful Men of his Bailiwick he make known to the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. U.* that they be before

before our Lord the King at *Westminster*, on *Tuesday* next after one Month of *St. Michael*, to shew in Form aforesaid, if, &c. and further, &c. The same Day is given to the said *A. B.* there, &c. At which Day before our Lord the King at *Westminster* came as well the said *A. B.* in his proper Person, as the said *R. S.* and *T. V.* in their proper Persons ; And the Sheriff as before returned, That the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* had nothing, nor had either of them any thing in his Bailiwick, where or by which he could make known to them, or either of them ; neither were they, nor was either of them, found in the same ; and the said *E. F. G. H. I. K. L. M. N. O.* and *P. Q.* although at that Day solemnly demanded, came not, nor did either of them come, but made Default ; upon which the said *A. B.* prayed that his Execution against the said *E. F. G. H. I. K. L. M. N. O. P. Q. R. S.* and *T. V.* of the Damages aforesaid, according to the Force, Form and Effect of the said Recognizance, might be adjudged to him, &c. And the said *R. S.* in his proper Person comes and says, that the said *A. B.* ought not to have his Execution against him, of the Damages, Costs and Charges aforesaid, by Pretence of the said Recognizance ; because he says, that after the said Judgment against the said *C. D.* at the Suit of the said *A. B.* was given in Form aforesaid, and before the Issuing forth

Return of the Sheriff,
Nihil.

Six of the Bail make Default.

Plea by one of the Bail no Ca. Sa.

forth of the said first Writ of our said Lord the King of *Scire facias* against the said R. S. as Bail of the said C. D. at the Suit of the said A. B. no Writ of *Capias* *ad Satisfaciendum* upon that Judgment, by the said A. B. against the said C. D. was in due Manner sued forth, returned and filed in the Court of the said Lord the King now here of Record, which, according to the Custom of that Court from the Time whereof the Memory of Man is not to the contrary, used and approved in the same, ought to have been done before any Writ of *Scire facias* against the said R. S. as Bail, as aforesaid, ought to have issued forth: And this he is ready to verify: Wherefore he prays Judgment whether the said A. B. ought to have his Execution against him the said R. S. of the Damages, Costs and Charges aforesaid, by Pretence of the said Recognizance, &c. And the said T. V. says, that the said A. B. ought not to have Execution against him of the Damages aforesaid; because he says, that after the Giving the said Judgment, and before the Issuing the said first Writ of *Scire facias*, to wit, in Another Bail
pleads a Levy
by Fieri Fa-
cias. Term in the Year of the Reign of our Lord the now King, the said A. B. for the obtaining the Damages aforesaid, prosecuted out of the Court here upon the said Judgment, a certain Writ of our Lord the King of *Fieri facias*, directed to the Sheriff of the County of Surry, against the said C. D. by which Writ it was then com-

commanded to the said Sheriff, that of the Goods and Chattels of the said *C. D.* he should cause to be made the Damages aforesaid, and that he should have that Money here on next after then next

following, to render to the said *A. B.* for the Damages aforesaid ; which said Writ afterwards, and before the Return thereof, to wit, on the Day of in the Year aforesaid, at *Croydon* in the said County of *Surrey*, was delivered to one (the said

then, and until, and after the Return of the said Writ, being Sheriff of the said County) by Virtue of which said Writ, the said Sheriff afterwards, and before the Return thereof, to wit, on the Day of in the Year aforesaid, at

Croydon aforesaid, had caused the said Damages to be made of the Goods and Chattels of the said *C. D.* And this he is ready to verify : Wherefore he prays Judgment whether the said *A. B.* ought to have his Execution against him of the Damages aforesaid, &c.

Replication no
Ca. Sa. sued
out.

And the said *A. B.* as to the Plea of the said *R. S.* says that he, by any thing by the said *R. S.* above in Pleading alledged, ought not to be barred or hindered from having his said Execution against him for the Damages aforesaid, by Virtue of the said Recognizance ; because he says, that after the said Judgment against the said *C. D.*

C. D. at the Suit of the said A. B. was given in Form aforesaid, and before the Issuing forth of the first Writ of our said Lord the King of *Scire facias* against the said R. S. as Bail of the said C. D. at the Suit of the said A. B. to wit, on the

Day of in the Year
of the Reign of our Sovereign Lord the now King, &c. he the said A. B. at *Westminster* in the County of *Middlesex* obtained and sued forth out of the Court of our said Lord the King before the King himself, the said Court being then and there at *Westminster* aforesaid, a certain Writ of our said Lord the King of *Capias ad Satisfaciendum* for the Damages, Costs and Charges aforesaid, upon the said Judgment against the said C. D. directed to the then Sheriffs of the City of *London*, by which Writ our said Lord the King commanded the said then Sheriffs, that they should take the said C. D. if he should be found in their Bailiwick, and safely keep him, so that they might have his Body before our said Lord the King, at *Westminster*, on

next after then next following,
satisfy the said A. B. for the said sixty and six Pounds, for the Damages, Costs and Charges aforesaid, upon the said Judgment against the said C. D. At which Day the said A. B. being in his proper Person appeared before the Court of our said Lord the King before the King himself, (the said Court being then and there at *Westminster* aforesaid

Returned Non
est Inventus

faid) the faid Sheriffs of London, to wit,
 at that Day returned to
 our faid Lord the King, that the faid C. D.
 was not found in their Bailiwick, as by the
 faid Writ of *Capias ad Satisfaciendum*, and
 the Return thereupon remaining filed on
 Record in the faid Court of our faid Lord
 the King before the King himself at *West-*
minster aforefaid, among the File of Writs
 of *Capias ad Satisfaciendum* of the faid
 Court, may more fully appear. And this
 he is ready to verify by that Record, &c.
 and prays, that the Record of the faid
 Writ, and the Return thereupon, by the
 Court of our faid Lord the King now here
 may be feen and inspected, &c.

Issue.

To the other
 Bail did not
 prosecute any
Fieri Facias.

And the faid *A. B.* fays, that he, by
 any thing by the faid *T. V.* above by plead-
 ing alledged, ought not to be barred or
 retarded from his Execution for the faid
 Damages againft the faid *T. V.* becaufe
 he fays, that he the faid *A. B.* did not at
 any Time hitherto, for the obtaining the
 faid Damages, prosecute out of the Court
 here upon the faid Judgment any Writ of
 our Lord the King of *Fieri facias* directed
 to the Sheriff of the County of *Surrey* a-
 gainft the faid *C. D.* as the faid *T. V.* has
 above by Pleading alledged : And he prays
 that this may be inquired of by the Court
 try ; And the faid *T. V.* thereupon doth
 the fame, &c. And becaufe the Court
 of our Lord the King now here is not yet
 advifed what Judgment to give, as well
 and concerning the Premiffes againft the
 aforefaid

Issue.

Continuance of
 first Issue by
Curia advi-
sare vult.

af-
 an-
 as
 the
 ple-
 A.
 fore-
 Jud-
 of
 not
 tryin-
 faid
 by t-
 ed,
 the
 Twe-
 ther,
 well,
 to the
 &c.
 King
 A. B.
 R. S.
 but be-
 the Ki-
 Judgm-
 cernin-
 E. F.
 for tha-
 concer-
 A. B.
 a Day
 to the
 Lord t-
 Vol.

aforesaid E. F. G. H. J. K. L. M. N. O.
and P. Q. for that they have made Default,
as of and concerning the Premisses between
the said A. B. and the said R. S. above
pleaded, a Day is given as well to the said
A. B. as the said R. S. That they be be-
fore the Lord the King at *Westminster*, on
next after to hear their

Judgment thereon, because the said Court
of our said Lord the King now here, is
not yet advised thereof; And as to the

trying the Issue above joined between the
said A. B. and the said T. V. to be tried
by the Country, the Sheriff is command-
ed, that he cause to come before our Lord

the King at *Westminster*, at the same Day,
Twelve, &c. by whom, &c. and who nei-
ther, &c. to recognize, &c. because as
well, &c. The same Day is given as well

to the said A. B. as to the said T. V. there,
&c. At which Day, before our Lord the
King at *Westminster*, came as well the said

A. B. in his proper Person, as the said
R. S. and T. V. in their proper Persons;

but because the Court of our said Lord
the King now here, is not yet advised what
Judgment to give, as well of and con-
cerning the Premisses against the aforesaid

E. F. G. H. I. K. L. M. N. O. and P. Q.
for that they have made Default, as of and
concerning the Premisses between the said

A. B. and the said R. S. above pleaded,
a Day is given as well to the said A. B. as
to the said R. S. that they be before the

Lord the King at *Westminster*, on
Vol. I. B b next

*As to the se-
cond Issue,
Venire a-
warded.*

*Parties ap-
pear.*

*First Issue con-
tinued by Cu-
ria advisari
vult.*

Distingas awarded on the second Issue.

next after to hear their Judgment thereon, because the said Court of our said Lord the King now here is not yet advised thereof; and as to the trying the Issue above joined between the said *A. B.* and the said *T. V.* to be tried by the Country, the Sheriff returned the said Writ in all Things served and executed, together with a Panel of the Names of the Jurors, of whom none, &c. Therefore the Sheriff is commanded, that he restrain the said Jurors, by all their Lands, &c. and that of the Issues, &c. so that he may have their Bodies before our Lord the King at *Westminster*, at the same Day, or before the King's Right Trusty and Well beloved Sir *William Lee*, Knt. his Chief Justice assigned to hold Pleas before the King himself, if he shall first come, or

next after

at *Westminster* aforesaid, in the great Hall of Pleas there, according to the Form of the Statute in such Case made and provided, for Default of the Jurors, because none of them did appear; therefore let the Sheriff have the Bodies, &c. The same Day is given as well to the said *A. B.* as to the said *T. V.* there, &c.

If Execution not within a Year and a Day after Judgment, a Sci. Fa. must issue to revive the Judgment.

If Execution be not taken out within a Year and a Day after Judgment is given in a Cause, there must be a *Scire Facias* taken out to revive the Judgment, and Execution cannot be taken out before such

Scire Facias is sued forth, and Judgment thereupon obtained.

If the Plaintiff takes out Execution within the Year, and it is not served, yet he may continue the same upon the Roll from Term to Term till served, and need not sue out any *Scire Facias*. If Execution sued out and continued on the Roll, no need of Sci. Fa.

If a *Cesset Executio* were for a Year after the Judgment, yet the Plaintiff within the next Year after may take out Execution without a *Scire Facias*. But I apprehend the *Cesset Executio* should be entered on the Roll. If a Cesset Executio for a Year, Plaintiff may have Execution after a Year and Day without Sci. Fa.

So if the Defendant brings a Writ of Error, and delays the Plaintiff for a Year, and then is Nonsuited, he may take out an execution without a *Scire Facias*. And in Case of a Writ of Error. Carth. 236.

Execution being stayed by Injunction out of Chancery for above a Year, and the Injunction being dissolved, the Plaintiff took Execution without a *Scire Facias*. *Sed per* ; We cannot take Notice of the Chancery Injunction, and you might have taken a Writ of Execution, and continued by *Viccomes non misit Breve* ; a *Superseas Quia Improvide* was awarded to the Execution. *Salk.* 322. But not in Case of an Injunction.

If a Judgment be of ten Years standing above, the Plaintiff cannot sue out a *Scire Facias* without Motion in Court ; if under ten, but above seven Years, he cannot have a *Scire Facias* without a Motion. If Judgment of 10 Years, must move Court for Sci. Fa. if above 7, must move the Side-Bar.

after Judgment so revived and before Execution Defendant must revive again, but may without Motion.

on at the Side-Bar. If after such Motion, and Judgment revived by *Scire Facias*, the Defendant dies before Execution, the Plaintiff must sue a new *Scire Facias*, but may have it without Motion, for the Judgment was revived before; *per Cur. Salk. 598.*

Execution of the same Term with the Judgment awarded on the Roll several Years after the Judgment, and continued down and executed without a Sci. Fa.

On a Judgment of *Hil. 30, 31 Car. 2.* and no *Elegit* (or other Execution) actually sued out within the Year and a Day, the Plaintiff without suing out a *Sci. Fa.* in *Trin. Vac. 5 W. & M.* took out an *Elegit*, whereupon an Inquisition was had, and the Plaintiff's Lands delivered in Execution; the Plaintiff entered on the Roll of the Judgment an Award of an *Elegit* of the same Term with the Judgment, with Continuances by *Vic' non misit bre.* to the Time of suing out the present *Elegit*. On examining several antient Practisers in Court it appearing that the Practice had been agreeable to this for many Years, the Court considering the Inconveniencies that might ensue by opening a Gap to destroy many Executions, and because the Practice had prevailed so long, ordered the Execution to stand. *Carth. 283. V. Comb. 232. 3 Dawd. Ab. 33. 2 Show. 235.*

Scire

Thing

Scire Facias to revive a Judgment after a Year and a Day.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Middlesex Greeting: Whereas

Sci. Fa. to revive a Judgment after a Year and a Day.

A. B. lately in our Court before us at Westminster by Bill, without our Writ, and by the Judgment of the same Court, recovered against *C. D.* otherwise called *C. D.* of &c. Four hundred and seven Pounds of Debt, and sixty-three Shillings for his Damages, which he sustained, as well by Occasion of the detaining that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *C. D.* is convicted, as appears to us of Record; and now on the Behalf of the said *A. B.* we have been informed in our Court before us, that although Judgment be thereupon given, yet Execution of the said Debt and Damages still remains to be made to him; whereupon the said *A. B.* hath prayed us, that a proper Remedy may be provided for him in this Behalf; and we being willing that what is just should be done on this Behalf, Command you, that by good and lawful Men of your Bailiwick you make known to the said *C. D.* that he be before us at Westminster, on

next after

to shew, if any

Thing he has or knows to say for himself,

B b 3

why

why the said *A. B.* ought not to have his Execution against him of the said Debt and Damages, according to the Force, Form and Effect of the said Recovery, if it shall seem expedient, &c. and further to do and receive what our said Court before us shall then and there consider of him in this Behalf; And have you there then the Names of those by whom you shall make known to him, and this Writ. Witness &c.

Must be directed into the County where the Original Action was brought.

The *Scire Facias* ought to be directed into the County where the original Action was brought, upon which the Judgment to be revived by the *Scire Facias* was obtained, for it shall be intended, that the Party against whom the Judgment was obtained doth inhabit still in the County.

If either of the Parties die, Execution cannot be sued out till a Sci. Fa. and Judgment upon it.

Where either Plaintiff or Defendant, or one of the Plaintiffs, or one of the Defendants die, there cannot be any Execution sued out, upon the Judgment, until a *Scire Facias* sued out and Judgment thereupon because there must be a new Judgment upon the *Scire Facias* to warrant the Execution, that being different from the old Judgment. See *Stat. 8 & 9 W. 3. c. 19*.

Michaelmas Term in the thirteenth
Year of King George the Second.

Middlesex, **O** UR Lord the King sent to ^{Entry of two} the Sheriff of *Middlesex* his ^{Sci. Fa. and} Writ Close, in these Words, *to wit,* George ^{Nihilis return-} the Second, by the Grace of God, of Great ^{ed, and Judg-} Britain, France and Ireland King, Defen- ^{against an Ad-} der of the Faith, &c. To the Sheriff of ^{ministratrix in} *Middlesex,* Greeting : Whereas *A. B.* ^{Case, on Judg-} lately in our Court, before us at *Westmin-* ^{her Intestate.} *ster,* by Bill, without our Writ, and by the Judgment of the same Court, recovered against *C. D.* fifty Pounds for his Damages which he sustained as well by Means of the not performing certain Promises and Undertakings by the said *C. D.* made to the said *A. B.* as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *C. D.* was convicted, as appears to us of Record ; And now on the Behalf of the said *A. B.* in our Court before us, we have been informed, that although Judgment be thereupon given, yet Execution of that Judgment still remains to be made to him ; and that the said *C. D.* is dead, and died Intestate ; and that Administration of all and singular the Goods and Chattels, Rights and Credits, which were of the said *C. D.* at the Time of his Death, was, after the Death of the said *C. D.* at *Westminster* in your County, in due Form of Law com-
mitted

mitted to one *E. D.* Widow and Relict of the said *C. D.* as on the Information of the said *A. B.* in our said Court before us, we have been also given to understand; whereupon the said *A. B.* hath humbly intreated us, that a proper Remedy may be provided for him in this Behalf; and we being willing that that which is just should be done on this Occasion, Command you, that by good and lawful Men of your Bailwic you make known to the said *E. D.* that she be before us at *Westminster*, on next after

to shew, if any thing she has or knows to say for herself, why the said *A. B.* ought not to have Execution against her of the Damages, Costs and Charges aforesaid, of the Goods and Chattels which were of the said *C. D.* at the Time of his Death in her Hands to be administred; if it shall seem expedient, &c. and further to do and receive what our said Court before us shall then and there consider of her in this Behalf; And have you there then the Names of those by whom you shall make known to her, and this Writ. Witness Sir *William Lee*, Knight, at *Westminster* the twenty-third Day of *October* in the twelfth Year of our Reign: At which Day before our Lord the King at *Westminster* the said *A. B.* came in his proper Person; and the Sheriff of *Middlesex*, &c. wit,

Return Nihil.

and
Sheriff of the said County, returned, that the said *E. D.* had not any thing in his Bailwic

liwic, where or by which he could make known to her ; neither was she found in the same ; and she came not : Therefore, as be- Alias Sci. Fa. fore, it is commanded to the Sheriff, that awarded.

by good and lawful Men of his Bailiwick he make known to the said E. D. that she be before our Lord the King at Westminster, next after

so shew in Form aforesaid, if, &c. and further, &c. The same Day is given to the said A. B. there, &c. At which Day before our Lord the King at Westminster came the said A. B. in his proper Person ; and the Sheriff as before returned, that the said E. D. had not any thing in his Bailiwick, where or by which he could make known to her ; neither was she found in the same ; and the said E. D. although at that Day solemnly demanded, came not, but made Default : It is therefore considered, that the said A. B. have his Execution against the said E. D. of the Goods and Chattels which were of the said C. D. at the Time of his Death in the Hands of the said E. D. to be administered, if she has so much in her Hands, by the Default of the said E. D.

Nihil return-

Execution & awarded de Bonis Testatoris.

If it be against Executors the Scire Facias runs thus :

GEORGE the Second, &c. To the Sheriff of Greeting : Whereas the said A. B. lately in our Court (as before to) as appears to of Record ; and afterwards the said C. D. at in your County

Sci. Fa. & against Executors.

County made his last Will and Testament in Writing, and thereby appointed *E. F.* and *G. H.* Executors thereof, and afterwards died there, the said *A. B.* being no ways satisfied of his Damages, Costs and Charges aforesaid; and now on the Behalf of the said *A. B.* in our Court before us, we have been informed, that although the said Judgment be given, yet Execution of that Judgment still remains to be made to him; whereupon the said *A. B.* hath humbly intreated us, &c. (as in the former, the Judgment is the same.)

Where after
Wife's Death
the Husband
shall have a
Scire Facias
on a Judg-
ment recovered
by the feme
whilst sole.

Feme sole recovered a Judgment, and married; *Sci. Fa.* by *Baron* and *Feme*, and Judgment thereon *Habere Executionem*, the Wife died, Husband brought a *Scire Facias* to have Execution in his own Right; Demurrer and Judgment *pro Quer.* in *C. B.* Error brought and adjudged, that the Award of Execution is attached in the Husband by the Judgment on the first *Sci. Fa.* and shall survive to him *Carth. 415.*

Can't plead in
Abatement of
Sci. Fa. what
was pleadable
to the original
Action.

A Matter cannot be pleaded in Abatement to a *Scire Facias*, which was pleadable in Abatement to the original Action as *Alience*, or the like, for the Defendant shall not disable the Plaintiff to have Execution where he has admitted him able to have Judgment. *Salk. 2.* But I apprehend the Defendant may plead outlawry to a *Scire Facias* upon a Judgment, if the Plaintiff was outlawed after the Plea in Bar, or Judgment by Default in the first Action.

When

Where Plaintiff or Defendant dies after ^{If Plaintiff or} Interlocutory Judgment, and before final ^{Defendant dies} Judgment, the Action shall not abate, but ^{after Interlo-} may be revived by *Scire Facias*, but not so ^{cutory Judg-} as to empower the Executor, &c. of a de- ^{ment, Sci. Fa.} ceased Plaintiff to carry on an Action, which ^{may go to re-} he as Executor, &c. could not have origi- ^{vive Judg-} nally brought, or to load the Executor, &c. ^{ment, and} of a deceased Defendant with an Action ^{shew Cause} that could not have been originally brought ^{why Damages} against such Executor, &c. See Stat. 8 & ^{should not be} 9 W. 3. c. 10. ^{assessed.}

Scire Facias for an Administrator of a Plaintiff dying after Interlocutory Judgment, and before Inquiry executed,

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriffs of London, Greeting: Whereas *A. B.* heretofore in our Court before us at *Westminster*, by Bill without our Writ impleaded *C. D.* being in the Custody of the Marshal of our *Marshalsea* before us, for that, *to wit*, that whereas [reciting the whole Declaration] to the Damage of the said *A. B.* of 200 *l.* as he said: And thereupon he brought Suit, &c. And in such manner were the Proceedings in our said Court before us at *Westminster*, that afterwards, *to wit*, in the Term of the Holy Trinity last past, it was considered by our said Court

*Interlocutory
Judgment.*

*Inquiry a-
warded.*

*Death of
Plaintiff.*

*Administra-
tion committed.*

Court before us, That the said *A. B.* ought to recover against the said *C. D.* his Damages occasioned by means of the Premises; but because it was unknown to our said Court before us, what Damages the said *A. B.* had sustained by Means of the Premises, it was commanded to the then Sheriffs of *London*, that by the Oath of twelve good and lawful Men of their Bailiwick, they should diligently inquire what Damages the said *A. B.* had sustained, as well by Means of the Premises, as for his Costs and Charges by him about his Suit in that Behalf expended; and that they should send the Inquisition, which they should thereupon take, to us at *Westminster*, at a certain Day now past, under their Seals, and the Seals of them by whose Oath they should take that Inquisition, together with our Writ thereupon directed to them, as by the Record and Proceeding thereupon now remaining in our said Court before us plainly appears; yet Inquisition of the said Damages still remains to be made; and the said *A. B.* after Interlocutory Judgment had been given in Form aforesaid, died intestate, to wit, at *London* aforesaid, &c. after whose Death to wit, on the Day of the Year of our Lord at *London* aforesaid, &c. Administration of all and singular the Goods and Chattels, Rights and Credits which were of the said *A. B.* at the Time of his Death, was by *John* by Divine Providence Archbishop of *Canterbury*, Primate of all *England*, and Metropolitane

in the Court of King's Bench.

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politan, to whom the granting the said Administration of Right belonged, in due Manner committed to one *E. B.* Widow, late Wife of the said *A. B.* as on the Information of the said *E. B.* we have been given to understand; and because we are willing that those Things, which have been rightly done and adjudged in our said Court before us, should be duly executed, We command you, that by good and lawful Men of your Bailiwick, you make known to the said *C. D.* that he be before us at *Westminster*, on next after to shew, if any thing he has or knows to say for himself, why the said Damages in the said Action ought not to be assessed and recovered by the said *E. B.* according to the Form and Effect of a certain Statute in such Case lately made and provided; if it shall seem expedient, &c. And have there then the Names of them by whom you shall make known to him, and this Writ. Witness Sir *William Lee*, Knight, at *Westminster*, the twenty-third Day of *October* in the Year of our Reign.

Anthony and Bigge.

Scire Facias against an Administrator of a Defendant dying after Interlocutory Judgment.

GEORGE the Second, &c. To the Sheriff of *Middlesex*, Greeting: Whereas
A. B.

*Interlocutory
Judgment.*

*Inquiry a-
warded.*

A. B. lately in our Court before us at *Westminster*, to wit, in *Michaelmas* Term last past, by Bill without our Writ impleaded *C. D.* then being in the Custody of the Marshal of our *Marshalsea* before us, For that, to wit, that whereas [recite the whole Declaration] to the Damage of the said *A. B.* of forty Pounds, as he said; and thereupon he brought Suit, &c. and in such Manner were the Proceedings in our said Court before us at *Westminster*, that the said *A. B.* ought to recover his Damages by occasion of the not performing the several Promises and Undertaking aforesaid; but because it was unknown to our said Court before us what Damages the said *A. B.* had sustained by occasion of the Premises aforesaid, We therefore commanded you, that by the Oath of twelve good and lawful Men of your Bailiwick you should diligently inquire what Damages the said *A. B.* had sustained, as well by occasion of the not performing the several Promises and Undertakings aforesaid, as for his Costs and Charges by him about his Suit in that behalf expended; and that you should send the Inquisition which you should thereupon make to us at *Westminster*, on next after last past, under your Seal and the Seals of them by whose Oath you should take that Inquisition, together with that Writ: And the same Day was given to the said *A. B.* before us at *Westminster* aforesaid, as by the Record and Proceedings thereupon, remaining in our said Court before

before us at *Westminster*, manifestly appears:

And whereas before the said *next Death of De-*
after the said *C. D.* at *Westmin-* *pendant.*

ter in your County died intestate, and
the Inquisition of the Damages aforesaid
still remains to be made, and one *E. D.*
Widow and Relict of the said *C. D.* is Ad-
ministratrix of all and singular the Goods
and Chattels which were the said *C. D.*'s
late Husband deceased, as on the In-
formation of the said *A. B.* We have been
given to understand; and because we would
that those things, which in our said Court
before us have been rightly acted, should
be duly executed, We command you, that
you good and lawful Men of your Bailiwick
make known to the said *E. D.* that she
be before us at *Westminster*, on *next*
after to shew, if any thing she has
to know to say for herself, why the said
Damages in the said Action ought not to
be assessed, and to be recovered by the said
A. B. according to the Form and Effect of
the Statute in such Case made and pro-
vided; if it shall seem expedient, &c. and
further to do and receive, &c.

At which Day before our Lord the King *Return Nihil,*
Westminster the said *A. B.* came by *R.*
his Attorney, and the Sheriff of the
County of *Middlesex*, to wit, and
returned, that by *F. G.* and
K. good and lawful Men of his Bailiwick,
had made known to the said *E. D.* that
she should be before our Lord the King at
the Day and Place contained in the said
Writ.

Writ, to shew, &c. according to the Tenor of the said Writ; which said *E. D.* so summoned at that Day, being solemnly demanded, came by *A. S.* her Attorney; upon which the said *A. B.* prays that the said Damages in the said Action may be assessed &c.

Entry of a final Judgment against the Executor of a Defendant dying before Writ of Inquiry.

Case upon several Promises; Defendant demurs; Judgment for the Plaintiff, and a Writ of Inquiry awarded, and before any final Judgment Defendant dies, and the Judgment revived according to the Statute.

Judgment for Plaintiff on Demurrer to Declaration.

At which Day before our Lord the King at Westminster came the Parties aforesaid by their Attornies aforesaid; upon which all and singular the Premisses being considered, and by the Court of our Lord the King here fully understood, and mature Deliberation being thereupon had, it appeared to the Court of our Lord the King here that the said Declaration, and the Matter therein contained, is good and sufficient by the Law, to hold and maintain the said Action of the said *A. B.* against the said *C. D.* Wherefore it is considered, that the said *A. B.* ought to recover against the said *C. D.* his Damages which he has sustained by occasion of the Premisses; and because it is unknown to the Court of our Lord the King, before the King himself now here what Damages the said *A. B.* has sustained by occasion of the Premisses, It is therefore

Inquiry awarded.

commanded to the Sheriffs of *London*, that by the Oath of twelve good and lawful Men of their Bailiwick they diligently inquire what Damages the said *A. B.* has sustained, as well by occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended, and that the Inquisition, which they should thereupon make, they should make apparent to our Lord the King at *Westminster*, on

next after under their Seals, and the Seals of them by whose Oaths they should take that Inquisition, together with the said Writ thereupon directed to them.

A Day is given to the said *A. B.* there, &c.

At which Day before our Lord the King at *Westminster* came the said *A. B.* by his Attorney aforesaid, and the Sheriffs did not return the said Writ, nor did they do any

thing thereupon, and the said *C. D.* did not come; and upon this the said *A. B.* says, Vic. non mis Breve.

that the Inquisition of the said Damages will remains to be made, and that the said

D. after the said interlocutory Judgment

was given in Form aforesaid, and before

any final Judgment obtained in the said

action, and before this Day, at *London* Defendant makes his Will.

aforesaid, in the Parish and Ward aforesaid, made his last Will and Testament in Wri-

ting, and by his said last Will constituted

and appointed one *E. D.* his Wife Execu-

trix of his said Will, and the said *C. D.* a-

foresaid died there, after whose Death, Death of De-

and before this Day, the said *E. D.* proved fendant:

the said Testament in due Form of Law, Executrix

and proves the

and Will.

and took upon her the Burden and Execution of the said Testament, *to wit*, at London aforesaid in the Parish and Ward aforesaid and because this is not denied, but the said Allegation of the said *A. B.* to the Court of our said Lord the King now here appears to be true: Therefore the said *A. B.* prays the Writ of our Lord the King of *Scire Facias* against the said *E. D.* Executrix of the said Testament, according to the Force of the Statute in such Case made and provided, to be directed to the Sheriffs of London aforesaid; and it is granted to him, &c. whereby it is commanded to the Sheriffs of London, that by good and lawful Men of their Bailiwick they make known to the said *E. D.* that she be before our Lord the King at *Westminster*, on next after

Scire Facias
awarded.

to shew, if any thing she has or claims in the said Action ought not to be assessed and recovered by the said *A. B.* it shall seem expedient, &c. At which Day before our Lord the King at *Westminster* came as well the said *A. B.* by his Attorney aforesaid, as the said *E. D.* in her proper Person; and the Sheriffs of London *to wit*,

Executrix appears.

That by Virtue of the said Writ to the directed by and good and lawful Men of their Bailiwick, they had made known to the said *E. D.* that she should be before our Lord the King at the Day and Place in the said Writ contained

Scire Feci.

to shew as the said Writ demands and requires; and the said *E. D.* says nothing, nor shews nor alledges any Matter to arrest *Nihil Dicit.* final Judgment in the said Action, or why the said Damages in the said Action ought not to be assessed and recovered by the said *A. B.* Therefore at the Prayer of the said *A. B.* by the Court of our Lord the King *Inquiry awarded.*

now here it is commanded to the Sheriffs of London, that according to the Form of the Statute in such Case lately made and provided, by the Oath of twelve good and lawful Men of their Bailiwick they diligently inquire what Damages the said *A. B.* has sustained, as well by occasion of the Premises, as for his Costs and Charges by him about his Suit in this Behalf expended; and that they send the Inquisition, which, &c. to our Lord the King at *Westminster*, on next after under their Seals, and the Seals of, &c. together with the Writ of our said Lord the King, now thereupon directed to them. The same Day is given to the said *A. B.* there, &c. At which Day before our said Lord the *Return.* King at *Westminster* came the said *A. B.* by his Attorney aforesaid; and the Sheriffs of London aforesaid, to wit,

Sheriffs of London aforesaid, by Virtue of the said Writ to them thereupon directed, return a certain Inquisition taken before them at the *Guildhall* of the City of London, situate in the Parish of *St. Lawrence* in the *Old Jury* in the Ward of *Cheap* in the said City, on the

Day of in the

Final Judg-
ment.De Bonis Te-
ratoris.Method to ob-
tain Judg-
ment de Bonis
Propriis, a-
gainst an Ex-
ecutor or Ad-
ministrato.

Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. by the Oath of Twelve, &c. by which it is found, that the said *A. B.* hath sustained Damages by occasion of the Premisses, besides his Costs and Charges by him about his Suit in this Behalf expended, to 58 *l.* and for these Costs and Charges to 1 *l.* 6 *s.* 8 *d.* It is therefore considered, that the said *A. B.* recover against the said *E. D.* his Damages aforesaid, by the said Inquisition found, in Form aforesaid, as also 28 *l.* 13 *s.* 4 *d.* which by the Court of our said Lord the King now here were adjudged to the said *A. B.* by his Assent, of Increase for his said Costs and Charges, which said Damages in the whole amount to 88 *l.* to be levied of the Goods and Chattels of the said *C. D.* at the Time of his Death, in the Hands of the said *E. D.* to be administered, if she has so much in her Hands, &c.

Where a Judgment by Default has been obtained in an Action brought against an Executor or Administrator, (which is de Bonis of the Deceased only) the Way formerly was, on *Nulla bona* returned on a *Fieri Facias*, to issue out a Writ to inquire whether the Defendant had wasted any of the Effects of the Deceased, and upon a *Devastavit* returned by Inquisition to proceed by *Scire Facias*, for the Defendant to shew Cause why the Plaintiff should not have

have Judgment *de Bonis propriis*; to which *Scire Facias* the Defendant might appear and plead *Plene Administravit*. Now the *Fieri Facias* Inquiry and *Scire Facias* are made out as the speedier Way in one Writ; but it is not worth while to proceed this Way for a small Debt, the Plaintiff being allowed no Costs after the first Judgment, unless the Defendant appears and pleads to the *Scire Facias*.

The readier and cheaper Method is to bring an Action of Debt on the Judgment, suggesting a *Devastavit*.

In the *Venire*, *Distringas* and *Jurata*, for *Venire Distringas and Jurata*, on a Trial upon a *Scire Facias*, after the Words [of a Plea of Debt or Trespass, as the Action is] you add these Words, "whereupon *Scire facias*." a *Scire Facias*, &c.

Ejectment.

THIS is an Action for a Tenant for Term of Years, who is ousted of his Possession, to recover his Term and Damages. *The Nature of an Action in Ejectment.*

But it now become the most usual Action for trying Titles to Land, and supplies the Place of many real Actions. *Now the common Action for trying Titles to Land.*

And the Method is to feign a Lease and an Ejector, and draw a Declaration against the feigned Ejector, and send a Copy thereof to the Tenant in Possession, giving him Notice to appear and defend his Title, or else that the Ejector will suffer Judgment *The Method of commencing the Action.*

by Default, and thereby the Tenant will be turned out of Possession.

*Tenant or
Landlord may
be admitted to
defend, on en-
tering into
common Rule.*

And thereupon the Tenant or the Landlord may be admitted to defend the Possession or Title, on entering into a Rule of Court to become Defendant in the Return of the casual Ejector, and to confess the Lease, Entry and Ouster at the Trial, and insist upon the Title only.

*Of what Things will or will not lie, and of the
Certainty and Uncertainty of describing them.*

An Ejectment lies of a Stable, as also of an Orchard and of a College. *Noy* 37. *C. El.* 818. 854. 1 *Roll Rep.* 55. *Cro. Jac.* 655. *Palm.* 337. *Hard.* 55, 57. *Cro. Ca.* 555. *Style* 215. Of a Garden. *Godb.* 6. 1 *Le.* 58. It lies of a Boilery of Salt. 1 *Lev.* 11. It lies *pro Stagno.* *Telv.* 143. 1 *Inst.* 5. *Reg.* 227. *et pro Gurgite.* 1 *Just.* 5. Of a Colliery. *Cro. Jac.* 150. *Noy* 121. 1 *Roll. Re.* 483. *Hard.* 57. *Carth.* 277. 4 *Mod.* 14. *Comb.* 201. 1 *Show. Rep.* 364. *Salk.* 255. *Prima Tonsura.* *Cro. Car.* 262. *pro Herbago.* *Hard.* 303. 401. *pro Pastura Centum Ovium.* *Dalif.* 95. *Hard.* 58. For Tithes, *Cro. Ca.* 301. 1 *Jones* 321. 1 *Just.* 159. *Dyer* 11. *pl.* 71. *Pro Rectoria.* *Latch* 62. *pro Capella.* by the Name of a Mesuage. 11 *R.* 25. *St.* 101. *Salk.* 256. Of a Hop-yard. *Palm.* 33. Of a House. *Cro. Jac.* 654. *Palm.* 33. 3 *Lev.* 97. *Hard.* 76. Of a Chamber in the second Story of such a House. 3 *Lev.* 21. *Noy* 109. *Hard.* 57. Of a Close called *containing three Acres of Land.* *Cro. Jac.* 435. *Palm.* 102. 4 *Mod.* 98. Of twenty Acres.

Acres of Furze and Heath. *Cro. Car.* 179.
1 Mod. 90. *Pro Quatuor Molendinis, pro De-*
sem acris Pisarum, Cro. Eliz. 339.

An Ejectment lies not *de pannagio*, for
pannagium is but the Privilege of taking
Pannage. *1 Lev.* 213. It lies not of a Rent
or Common appendant. *Cro. Car.* 202. *Cro.*
fac. 146. *1 Inst.* 9. a. Nor *de quodam Ri-*
culo, &c. aquæ cursu. Telv. 143. *1 Brownl.*
142. *Poph.* 167. *sed v. Godb.* 157. Nor *de*
Piscaria in such a River. *Cro. Car.* 492. *Cro.*
fac. 146. Nor *de Crofto. Style* 30. *Sed v. 1*
Lev. 58. Nor of a Kitchen. *Noy* 109. Nor
of a Close. *Godb.* 53. *11 R.* 55. *1 Roll. Rep.*
55. *Bridg.* 56. *Sed v. Cro. Eliz.* 235, 339.
Cro. fac. 654. *Owen* 18. Nor of Arable nor
Pasture Land without shewing how much of
one, and how much of the other. *Bridg.* 56.
Hard. 133. *Palm.* 102. *3 Lev.* 97. *Salk.* 254.
Nor *pro Virgata terræ. Cro. Eliz.* 339.
Ejectment in *Ireland de Castro, villa &*
Terris in Kilbrough without expressing the
Number and Certainty of Acres is insuf-
ficient, for upon such a general Demand no
Habere facias possessionem can be awarded
and executed. *Telv.* 118.

An Ejectment lies not of the fourth Part
of a Meadow without shewing the Number
of Acres the Meadow contains. *1 Lev.* 213.
Ejectment for five Closes of Land arable
and Pasture, called *Long Furlongs*, contain-
ing ten Acres, held ill; the Plaintiff ought
to have set forth how many Acres of arable
Land, and how many Acres of Pasture di-
stinctly, so as the Sheriff might certainly
know what to deliver upon the *Habere fa-*

cias possessionem. Carth. 204. Cro. Car. 573. 471. Hard. 59. Salk. 254. 1 Show. 338. 4 Mod. 42, 97. Comb. 198.

Ejectment in *Durham de Mineris Carbo-*
num, not saying how many. *Judic. pro Q.*
and affirmed in Error, the Plaintiff produ-
cing several Precedents in *Durham*, and al-
ledging all the Entrys there in Ejectments
for Coal-mines were the same as in this
Case. *Carth. 277. 4 Mod. 143. Comb. 201.*
1 Show. 364. Salk. 255.

An Ejectment *de uno Mesuagio, five tene-*
mento, naught. *Cro. Eliz. 186. 3 Leon. 228.*
Poph. 197, 203. Noy 86. Cro. Jac. 125.
Style 364. 1 Sid. 295. Cro. Eliz. 116.
March 96. 2 Roll. Abr. 80.

But an Ejectment of a Mesuage or Te-
nement called the *Black Swan* was held to be
good. *1 Sid. 295. 3 Mod. 238. 4 Mod. 136.*

An Ejectment for a Mesuage or Burgage
is good. *Hard. 173. vide Poph. 203.*

An Ejectment for 100 Acres of Waste, or
pro centum Acris Montis, naught for Incer-
tainty. *Hard. 57. Palm. 100. 1 Roll. Rep.*
166. But for 100 Acres of Bogg in Ireland
good. *Cro. Car. 512. Palm. 100. Salk. 255.*
1 Show. 338.

Ejectment for a House, ten Acres of
Land, and twenty Acres of Meadow, by
the Name of a House, and ten Acres of
Meadow. Verdict *pro Quer.* but Judgment
arrested for Repugnancy and Uncertainty.
Tel. 166. 4 Mod. 143.

Ejectment for a Manor should describe
the Quantity and Species of Land contained
therein

therein. *Hetl.* 146. *Litt. Rep.* 301. *Latch* 61.

Ejectment for ten Acres of Wood and ten Acres of Underwood, good. 2 *Roll. Rep.*

482. An Ejectment *de omnibus & omnimodis Decimis in Decem Acris in D.* without saying *Garbarum, Foeni, Lanæ Agnellozum*, or giving any other Description of the Nature and Quality of the Tithes, naught. 11 *Rep.* 25. *Moor* 837. *pl.* 1130. 1 *Roll. Rep.* 68. *Palm.* 101.

An Ejectment *pro quadam Portione Grano-rum & Foeni*, good. 11 *Rep.* 25. *Hard.* 57. *Dyer* 116.

An Ejectment for a certain Place called the Vestry in *D.* good. 3 *Lev.* 96.

The Form of a Declaration in Ejectment.

Easter Term in the Eleventh Year of King George the Second.

Middlesex. **J**OH N Den complains of Richard Fen being in the Cu-
Declaration in Ejectment.

body of the Marshal of the Marshalsea of our Lord the King before the King himself, for that, *to wit*, That whereas *E. W. Esq;* on the Tenth Day of May in the Eleventh Year of the Reign of our Sovereign Lord George the Second, now King of Great Britain, &c. at Westminster in the County of Middlesex, had demised and granted, and

to Farm let to the said *John Den* four Mesuages, (reciting the Parcels) with the Appurtenances, situate, lying and being in the Parish of (the Place where the Premises lie) in the County aforesaid; To have and to hold the said Tenements, with the Appurtenances aforesaid, to the said *A. B.* and his Assigns, from the twenty-fifth Day of *March* then last past, unto the full End and Term of five Years thence next ensuing, and fully to be complete and ended; by Virtue of which said Demise the said *John Den* entered into the said Tenements, with the Appurtenances, and was possessed thereof, until the said *Richard Fen* afterwards, *to wit*, on the said Tenth Day of *May* in the Eleventh Year aforesaid, with Force and Arms, &c. entered on the Tenements aforesaid, with the Appurtenances, in and upon the Possession of the said *John Den*, and ejected, drove out and amoved the said *Richard Fen* from his said Farm, his said Term not being yet ended, and kept out, and still keeps out the said *Richard Fen* so ejected, drove out and amoved from his said Possession, and then and there did other Injuries to him, against the Peace of our Lord the now King, and to the Damage of the said *Richard Fen* of ten Pounds: And thereupon he brings Suit, &c.

Robert Bicknell for the Plaintiff,
for the Defendant.

Pledges to prosecute { *John Doe*,
and
} *Richard Roe*.

*Notice to be wrote under the Declaration,
for the Tenant in Possession.*

Mr. ———

I am informed that you are in Possession, *Notice to be*
or claim Title to the Premisses in this De- *wrote under*
claration of Ejectment mentioned, or to *Declaration.*
some Part thereof, and I being sued in this
Action as a casual Ejector, and having no
Claim or Title to the said Premisses, do
advise you to appear on the first Day of next
Trinity Term in His Majesty's Court of
King's Bench at Westminster, by some Attor-
ney of that Court, and then and there by
Rule of the same Court, to cause yourself to
be made Defendant in my Stead; otherwise I
shall suffer Judgment to be entered against
me, and you will be turned out of Pos-
session.

Your Friend,

22d May 1738.

Richard Fen.

A true Copy of this Declaration and No- *To be deliver-*
tice must be delivered personally to the *ed to Tenant*
Tenant or to his Wife, to whom at the *or Wife, and*
Time of the Delivery the Notice should be *Notice read,*
&c.
read over, or an Account given of the Con-
tents and Meaning thereof.

A Copy of the Declaration, and Notice *Delivered to his*
left for the Tenant with his Son, Daughter, *Son, Daughter,*
or Servant, he being abroad or out of the *or Servant, not*
Way, is not a good Delivery, unless it evi- *good, unless pro-*
dently appear to the Court, that such De- *ved to come to*
his Hands, and
claration *he knew the*
Meaning of it.

claration and Notice came to his Hands before the *Effoin*-Day of the Term, and that on Receipt thereof, he very well understood the Contents and Meaning of the Notice; and in such Case it has been held a good Delivery. See *Salkeld* 255. pl. 5.

Not good Delivery on a Sunday, &c.

The Delivery of the Declaration on a Sunday, or after, or even upon the *Effoin*-Day that Term wherein the Defendant is to appear, is void.

If Tenant does not appear, Plaintiff may have Rule for Judgment.

If the Tenant do not appear and enter into the Common Rule, the Plaintiff may, on Affidavit of Delivery of the Declaration, move the Court, That unless the Tenant in Possession will enter into such Rule, Judgment may be entered against the casual Ejector.

Affidavit.

Affidavit of Service of Declaration in Ejectment. Lilly's Entries 203.

G. H. of, &c. maketh Oath, That he the Deponent, on the _____ Day of _____ last, delivered a true Copy of the Declaration, and Notice hereunto annexed, to _____ Tenant in Possession of the Premises in the said Declaration mentioned, and at the same Time told him, that it was a Declaration in Ejectment, and that unless he did appear by some Attorney of the Court of *King's Bench*, the first Day of this present *Michaelmas* Term, there would be a Judgment thereupon against the Defendant by Default, and he would be turned out of Possession, or Words to that Effect.

The

The Affidavit must be positive that the Tenant is Tenant in Possession, for Information or Belief in this Case will not do. *Affidavit must be positive, that the Tenant is Tenant in Possession, and not on Information.*

If the Plaintiff does not move for Judgment in the Term wherein the Tenant had Notice to appear, the Court will not grant Rule for Judgment. See *Salk. 257. pl. 9.* *Plaintiff must move for Judgment the same Term. Tenant had Notice to appear.*

Where the Premises sued for lie in *London or Middlesex*, if the Notice to the Tenant at the Bottom of the Declaration be to appear the next Term generally, without expressing any Day in the Term, the Tenant in Possession has the whole Term to appear in. *What Time to appear where the Premises lie in London or Middlesex, and Notice is to appear of the next Term generally.*

If the Notice be to appear the first Day of the Term, or the Beginning of the Term, the Premises lying in *London or Middlesex*, the Tenant in Possession, by the Course of the Court, has four Days inclusive, next after the Motion made for Judgment, to appear and make his Defence, if the Motion be made early in the Term; otherwise the Court will allow only one or two Days, and sometimes will order the Tenant to appear immediately, that the Plaintiff may be able to give Notice of Trial within Term. *What Time to appear, when Notice is for the first Day, or Beginning of the Term.*

But if the Plaintiff does not move for Judgment before the last four Days of the Term, the Tenant will have until two Days before the *Essoin-Day* of the subsequent Term, to appear and make his Defence.

Where the Lands lie in any other County than *London or Middlesex*, the Tenant *What Time when in any other County.*
in

in Possession, although the Declaration be delivered before the *Essoin*-Day of *Easter* or *Michaelmas* Term, has four Days after the End of the next issuable Term to appear.

What Time when in Cumberland, or other County where Judges go but once a Year.

Method of appearing.

And if the Lands lie in *Cumberland*, or any other County where the Judges go but once a Year, the Tenant in Possession may appear at any Time within four Days next after the End of the Term preceding the Assizes to be held for such County.

The Method of appearing is by the Attorney for the Defendant, leaving the following Rule signed by himself, at the Chambers of one of the Judges, and giving Notice thereof to the Plaintiff's Attorney, who must also sign the Rule.

Rule by Consent.

The Rule by Consent.

Michaelmas Term in the Twelfth Year of King George the Second.

A. B. against C. D. for [naming the Parcels] in the County of

on the Demise of E. F.

It is ordered by the Consent of the Attornies of both Parties, that G. H. be made Defendant in the Stead of the now Defendant C. D. and do appear forthwith at the Suit of the Plaintiff, and file Common Bail, and receive a Declaration in an Action of Trespass, and Ejectment for the Premises in Question, and forthwith plead thereto, Not guilty, and upon Trial of the Issue confess Lease, Entry and Ouster, and insist upon the Title only; otherwise let Judgment be entered for the Plaintiff and gain

against the now Defendant *C. D.* by Default; and if upon the Trial of the Issue, the said *G. H.* shall not confess Lease, Entry and Ouster, whereby the Plaintiff shall not be able further to prosecute his Bill against the said *G. H.* then no Costs shall be allowed for not further prosecuting the same; but the said *G. H.* shall pay Costs to the Plaintiff in that Case to be taxed: And it is further ordered, That if upon the Trial of the said Issue, a Verdict shall be given for the said *G. H.* or it shall happen that the Plaintiff shall not further prosecute his said Bill for any other Cause than for not confessing Lease, Entry and Ouster, then the Lessor of the Plaintiff shall pay to the said *G. H.*'s Cost in that Behalf to be adjudged.

R. B. for the Plaintiff.

A. S. for the Defendant.

This Rule, or rather Agreement for a Rule thereon Rule, after signed by the Plaintiff's Attorney, and by the Judge, at whose Chamber it was left, must be carried to the Clerk of the Rules, who draws up the Rule of Court from it, of which each Attorney should bespeak and take a Copy.

Then the Attorney for the Defendant must file Common Bail on a *Cepi Corpus*, and on receiving a Declaration with the new Defendant's Name in it, instead of the casual Ejector's, immediately plead the General Issue, and then the Proceeding to Trial is as in other Cases. But it is usual, after

Rule thereon drawn up by the Clerk of the Rules.

Defendant's Attorney to file Common Bail, and receive Declaration, and plead Not guilty.

after the Rule is drawn up to make up the Issue with the new Defendant's Name instead of the casual Ejector's, and deliver it to the Attorney with a Copy of the Rule without delivering a Declaration.

But if Tenant in Possession does not appear, Judgment against casual Ejector.

If the Tenant in Possession does not appear by the Time he ought, and enter into this Rule by Consent, you draw up the Rule for Judgment, may sign Judgment against the casual Ejector, and have a Writ of Possession of the Premises.

Judgment by Nil Dicit against the casual Ejector, with an Imparance to the next Term after the Declaration.

And now at this Day, *to wit*, (the first Day of the next Term) to which Day the said C. D. had Leave to imparle to the said Bill, and there to answer, &c. before our Lord the King at Westminster came the said A. B. by his Attorney aforesaid: And the said A. B. prays that the said C. D. may answer his said Declaration; and the said C. D. although at the same Day solemnly demanded comes not, neither does he say any thing in Bar or Preclusion of the said Action of the said A. B. whereby the said A. B. remains thereof undefended against the said C. D. &c. It is therefore considered, That the said A. B. do recover against the said C. D. his Term yet to come of and in the said Tenements with the Appurtenances and also his Damages, by occasion of the said Trespass and Ejectment; and upon this the said A. B. freely here in Court remits to the said C. D. as well all such Damages, Costs and Charges, as may be adjudged.

Remittit Dampna.

Wh
fual
court
g in
case,
judgm
e Te
cover
ction.
No I
ndant
posseffio
tion o
Vol.

judged to the said *A. B.* in this Behalf, as
all Judgments and Executions for the said
Damages, Costs and Charges: Therefore
let the said *C. D.* be discharged from the
said Damages, Costs and Charges; and the
said *A. B.* craves the Writ of our Lord the
King, to be directed to the Sheriff of

to cause him to have Possession of his said Term yet to come of and
in the said Tenements with the Appurtenances; and it is granted to him, returnable before our Lord the King at *Westminster*, on
next after

The same Day is given to the said *A. B.*
here, &c.

And the said *C. D.* by *R. R.* his Attorney comes and defends the Force and Injury, when, &c. and says nothing in Bar or Preclusion of the Action of the said *A. B.*
but made Default, whereby the said *A. B.* remains thereof undefended (as before).

Judgment of the same Term with the Declaration.

Where Judgment is obtained against the casual Ejector, and a Trial is not lost, the court will, on Payment of Costs and entering into the common Rule for confessing lease, Entry and Ouster, set aside such Judgment as in other Actions, and not put the Tenant to the Charge and Hazard of recovering back his Possession by another Action.

Judgment against the casual Ejector set aside on Terms.

No Person shall be admitted to be Defendant in Ejectment with the Tenant in Possession, but he that hath been in Possession or receives the Rents.

Who shall be admitted to join as Defendant with the Tenant.

Landlord may be joined on Request, but not compelled to join.

The Landlord may be joined a Defendant with the Tenant in Possession, if he requests it, but cannot be compelled to join; and though the Landlord should be a Member of Parliament, he must be joined, and cannot be compelled to waive his Privilege. *Salk. 256.*

Any Person claiming Title may be made Defendant with the Tenant.

Any Person claiming Title to the Premises in Question may, with Leave of the Court, be made a Defendant with the Tenant in Possession; but the Court never permits such Persons to defend alone, without the Tenant.

Landlord empowered to make himself Defendant, &c.

But great Inconveniencies having happened by Tenants refusing to appear to such Ejectments, or suffer their Landlords to take on them the Defence thereof; by *Stat. 1 Geo. 2. c. 19.* the Court may suffer the Landlord to make himself Defendant, by joining with the Tenant, in Case he shall appear; but if the Tenant shall refuse to appear, Judgment shall be signed against the casual Ejector for want thereof: But if the Landlord of any Part of the Land, &c. shall desire to appear by himself, and consent to enter into the like Rule that the Tenant, in case he had appeared, ought to have done, then the Court shall permit such Landlord so to do, and order a Stay of Execution upon such Judgment against the casual Ejector, until they shall further order therein.

Penalty on Tenant secreting Declaration in Ejectment.

And by the same Statute, a Tenant, to whom any Declaration in Ejectment shall be delivered, shall forthwith give Notice thereof.

thereof to his Landlord, under Penalty of forfeiting the Value of three Years improved or Rack Rent.

Where a Defendant shall enter into the Common Rule, to confess Lease, Entry and Ouster, for so much of the Tenements mentioned in the Declaration, as are in the Possession of such Defendant, or of his Under-Tenants, the Attorney of such Defendant shall forthwith deliver to the Attorney of the Plaintiff a Note in Writing of the Tenements so in the Possession of such Defendant, or of his Under-Tenants. *Trin. 15*

Defendant to give a Note of the Premises, where he doth not defend the whole.

Car. 2.

If at the Trial the Defendant will not appear, and confess Lease, Entry and Ouster, the Course is to call the Defendant, and his Attorney, if he be within the Rule, and then to call the Plaintiff himself, and consult him, and then upon the Return of the *Posse*, Judgment will be given against the casual Ejector; also the Master will tax Costs upon the Rule for confessing Lease, Entry and Ouster; and if these be demanded of the Defendant, and not paid, the Court upon Affidavit will grant an Attachment. *Salk. 259.*

Proceeding against the Defendant, if he does not confess Lease, Entry and Ouster at the Trial.

And where there are several Defendants, and at the Trial some of them will not appear, and confess Lease, Entry and Ouster, and they who do appear will not confess Lease, Entry and Ouster, for those who do not appear, the Plaintiff shall not be non-suited, but they who do not appear shall be found Not guilty, and the Plaintiff shall

Where several Defendants, and some will not confess, and some will.

proceed to Trial against those who appear, and may enter up Judgment against the casual Ejector, and have Execution thereon against the Lands of those who did not appear, notwithstanding they were found Not guilty upon the Trial.

*How if the
not confessing
is in Respect
to some Vari-
ance.*

But where the Defendant's not confessing Lease, Entry and Ouster, is with Respect to some Variance, and the Defendant on that Account makes no Defence, Judgment shall not be entered against the casual Ejector, neither shall the Plaintiff have any Costs; and yet this Case is not provided for in the Rule by Consent.

*How to pro-
ceed where
Plaintiff non-
sued on the
Merits, or
Verdict for the
Defendant.*

Where a Verdict shall be given for the Defendant, or the Plaintiff shall be nonsuited for any other Cause than for the Defendant's not confessing Lease, Entry and Ouster, the Defendant must proceed to pay his Costs on the *Postea*, as in other Actions, and sue out a *Capias ad Satisfaciendum* against the Plaintiff; and if upon shewing the fact Writ under Seal to the Lessor of the Plaintiff, and serving him with a Copy of the Rule by Consent to confess Lease, Entry and Ouster, the Lessor of the Plaintiff do not pay the Costs, the Court will grant Attachment against him.

*The Lessor of
the Plaintiff
or the Plaintiff
may bring an
Action for the
Mean Profits.*

Where there is a Recovery in Ejectment by Verdict, an Action may be brought to recover the Mesne Profits from the Time of the Defendant's Entry laid in the Declaration; and at the Trial it is not necessary to prove any Entry of the Defendant, because the Defendant doth in the Rule con-

sees Lease, Entry and Ouster; and also an Entry upon the Plaintiff by the Defendant is found by the Verdict against him. And this Action may be brought either by the Plaintiff in the Action, or by the Lessor of the Plaintiff, and where the Plaintiff brings it, he need only at the Trial to produce his *Posse* of his Recovery; but where the Lessor brings it, he must prove his Title over again if it be insisted on by the other Side, or else he will be nonsuited.

The Plaintiff in Ejectment is a mere Nominal Person, and Trustee for the Lessor; and if he release the Action, or if an Action be brought for the mean Profits, and he release it, he may be committed for Contempt. *Salk. 260.*

Release of Plaintiff a Contempt.

If the Demise be laid to be on a Day after the End of the Term of which the Declaration against the Casual Ejector is, it is well; as if for Non-payment of Rent at *Michaelmas* a Declaration as of the last *Trinity* Term on a Demise in *October* following, be delivered before the *Effoin*-Day of *Michaelmas* Term, if the Tenant does not appear, he can take no Exception to the Proceedings, as not being a Party; if he does appear, he must enter into the Common Rule to confess Lease, Entry and Ouster, and thereby undertakes to receive a new Declaration, which will then be of *Michaelmas* Term, and consequently subsequent to the Day of the Demise.

Demise may be on a Day after the Term of which Declaration against Casual Ejector is.

Where the Lessor of the Plaintiff is an Infant, the Declaration ought to set forth

How Declaration ought to be when an Infant Lessor.

a Lease by Deed, and also rendering some Rent, though it be but five Shillings, otherwise the Lease will be void; whereas this Lease so declared upon, and which must be confessed by the Defendant in his Rule of Lease, Entry and Custer, is not void, but voidable; and although this is really but a fictitious Lease, and only to try the Title, yet it must be a good Lease in Law; if it is not, the Action will not lie upon it. See 2 Leon. Case 275. fol. 218. *Modern Cases* 248.

*On Demise of
an Infant Pro-
ceedings stayed
till Security for
Defendant's
Costs.*

If an Ejectment be brought on the Demise of an Infant, the Court will stay the Proceedings till a sufficient Plaintiff be named, or some Person undertake on Behalf of the Infant to pay such Costs as shall be adjudged to the Defendant.

*When Lease
sealed on the
Premises,
there must be
an Affidavit of
the whole Pro-
ceeding.*

Where the House is empty, the Lands untenanted, and the Proceedings are in the old Way by sealing a Lease on the Premises; on the Motion for Judgment there must be an Affidavit of the Sealing the Lease, and the Purport of it ought to be shortly set forth in the Affidavit, and also in what Manner the Defendant got the Possession given to and taken from the Lessee (who is always made Plaintiff,) how the Declaration was delivered to the Defendant; that the Court may judge of the Regularity of the Proceedings.

A Motion was made for Judgment in Ejectment upon a Lease sealed on the Land and denied; for *per Curiam*, you must try it. *Comb.* 13.

Where

Where Half a Year's Rent shall be in Arrear, the Landlord having a Right to re-enter for Non-payment, may serve a Declaration in Ejectment without a formal Demand or Re-entry, or affix such Declaration on the Door of any demised Messuage, or notorious Part of the Land, which shall be deemed a Legal Service; and on Proof that half a Year's Rent was due before the Declaration was served, and no sufficient Distress on the Premises countervailing the Arrears of the Rent then due, the Lessor shall recover. *Stat. 4 Geo. 2. c. 28.*

But in moving for Judgment in this Case there must be an Affidavit, that there was Half a Year's Rent in Arrear before Declaration served, that the Lessor of the Plaintiff had a Right to re-enter, that no sufficient Distress was to be found on the Premises countervailing the Arrears of Rent then due, that the Premises were untenanted, or that the Defendant could not be legally served with the Declaration (as the Case is) and that a Copy of the Declaration was affixed on the most notorious, and what Part of the Premises, or the Court will not give a Rule for Judgment. *Of Purport of Affidavit on Motion for Judgment.*

If the Tenant (in this Case) before Trial will either tender to the Plaintiff, or bring into Court, the Rent in Arrear, together with Costs, all further Proceedings shall cease. *On Payment of Rent and Costs before Trial, Proceedings to cease.* *Stat. 4 Geo. 2.*

In these Cases the like Time is allowed for the late Tenant or other Persons claiming Title to the Premises, to appear, as is allowed in Possession. *In these Cases same Time allowed to appear as to Tenant in Possession.*

allowed for the Appearance of Tenants in Possession.

Method of getting Possession where the Tenant runs away a Year's Rent in Arrear, and leaves the Premises untenanted.
Stat. 11 Geo. 2.

Landlords being often great Sufferers by Tenants running away in Arrear, and refusing to deliver up Possession, whereby the Landlords have been put to the Expence of recovering Possession by Ejectment; by Stat. 11 Geo. 2. c. 19. If any Tenant holding at a Rack-Rent, or where Rent reserved shall be Three-fourths of the yearly Value, who shall be in Arrear for one Year's Rent, shall desert the Premises, and leave the same, so as no sufficient Distress can be had, two Justices of the Peace (having no Interest in the Premises) at the Request of the Landlord, may go and view the same, and affix on the most notorious Part of the Premises, Notice in Writing, what Day (at Distance of fourteen Days at least) they will return to take a second View thereof; and if on such second View the Tenant, or some Person on this Behalf, shall not pay the Rent in Arrear, and there shall be no sufficient Distress, the Justices may put the Landlord into Possession, and the Lease thereof to such Tenant as to any Demise shall be void.

A Nisi Prius Record in Ejectment.

Pleas before our Lord the King at Westminster, of the Term of Saint Michael in the Twelfth Year of the Reign of our Sovereign Lord George the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. and in the Year of our Lord 1738.
Roll.

Middlesex, to wit, Be it remembered, *A Nisi Prius*
that on Monday next after three Weeks from *Record in*
the Day of Saint Michael in this same Term *Ejectment.*
before our Lord the King at Westminster
Peter Noble comes by Anthony Beckwith his
Attorney, and now brings here into the
Court of our said Lord the King his certain
Bill against Fairbeard Swinburn being in the
Custody of the Marshal of the Marshalsea
of our Lord the King before the King him-
self, of a Plea of Trespass and Ejectment
of Farm; and there are Pledges of Prose-
cuting, to wit, John Doe and Richard Roe;
which said Bill follows in these Words;
Middlesex, to wit, Peter Noble complains of
Fairbeard Swinburn being in the Custody
of the Marshal of the Marshalsea of our
Lord the King before the King himself,
For that, to wit, that whereas Robert Ri-
chardson, Gentleman, on the twenty-first
Day of January in the eleventh Year of
the Reign of our Sovereign Lord George
the

the Second, now King of Great Britain &c. at the Parish of Saint *James Clerkenwell* in the County of *Middlesex*, had demised, granted, and to farm let to the said *Peter Noble* twenty Mesuages with the Appurtenances, situate, lying and being in the Parish of Saint *James Clerkenwell* in the said County of *Middlesex*; To have and to hold the said Mesuages with the Appurtenances to the said *Peter* and his Assigns from the twenty-fifth Day of *December* then last past unto the full End and Term of five Years from thence next ensuing, and fully to be compleat and ended; by virtue of which Demise the said *Peter* entered into the said Mesuages, with the Appurtenances, and was possessed thereof until the said *Fairbeard* afterwards, to wit, on the said twenty-first Day of *January* in the eleventh Year aforesaid, with Force and Arms, &c. entered on the Mesuages aforesaid, with the Appurtenances, in and upon the Possession of the said *Peter*, and ejected, drove out and amoved the said *Peter* from his said Farm, his said Term not being yet expired, and thereupon kept out and still keeps out from his said Possession the said *Peter* so ejected, drove out and amoved, and then and there did other Injuries to the said *Peter*, against the Peace of the present King, and to the Damage of the said *Peter* of ten Pounds: And therefore he brings Suit, &c.

Not guilty.

And the said *Fairbeard* by *Thomas Smith* his Attorney comes and defends the Force and Injury

injury and Damages, and whatever else he
ought to defend, when and where the Court
will take the same into Consideration; and
with, that he is in nothing guilty of the
Trespafs and Ejectment aforesaid, as the said
Peter above complains against him: And of
this he puts himself upon his Country; and
the said Peter likewise: Therefore let a Venire.
Jury thereupon come before our Lord the
King at *Westminster*, on *Tuesday* next after
fifteen Days of *Saint Martin*; and who
are in no wise of Kin either to the said Peter
or to the said Fairbeard, to take Cognizance
upon their Oaths of the whole Truth of
the Premises, because as well the said Fair-
beard as the said Peter have put themselves
upon that Jury. The same Day is given
to the Parties aforesaid at the same Place.

*Pleas before our Lord the King at West-
minster, of the Term of Saint Michael
in the twelfth Year of the Reign of our
Sovereign Lord George the Second, by
the Grace of God, of Great Britain,
France and Ireland King, Defender of
the Faith, &c. And in the Year of our
Lord 1738.*

Middlesex, **T**H E Jury between Peter Jurata
to wit. Noble Plaintiff, by his At-
torney, and Fairbeard Swinburn Defendant,
a Plea of Trespafs and Ejectment of
Farm, is respited before our Lord the King
at *Westminster* until *Tuesday* next after the
Feast of *Saint Hilary*, unless the King's
Right

Right Trusty and Well-beloved Sir *William Lee*, Knight, His Majesty's Chief Justice assigned to hold Pleas before the King himself, shall first come on *Wednesday* the twenty-ninth Day of *November*, at *Westminster-Hall* in the County of *Middlesex* aforesaid, according to the Form of the Statute in such Case made and provided, for Default of the Jurors, because none of them did appear; therefore let the Sheriff have the Bodies of the said Jurors to make the said Jury between the Parties aforesaid of the Plea aforesaid accordingly. The same Day is given to the Parties aforesaid, at the same Place.

*Proceeding in
Ejection by
Original.*

As many prefer the Method of proceeding by Original in this Action, on Account of the Difficulty and Expence the Defendant may be at in obtaining and proceeding on a Writ of Error in Parliament to reverse the Judgment; I shall give some few Precedents in that Way.

The Rule by Consent is the same, only leave out these Words [and file Common Bail] and instead of the Word [Bill] say [Writ.]

Issue on Declaration by Original, upon two
several Demises.

Easter Term in the Eleventh Year of King
George the Second.

Berks, *SIMON Winch*, late of *Bray* in *Issue in Eject-*
to wit. the County aforesaid, Gentle-ment by Ori-
man, was attached to answer *Thomas Bar-*ginal on a
ter, Gentleman, of a Plea, wherefore withdouble Demise.

Force and Arms, into six Mesuages, six
Cotages, sixty Acres of Land, sixty Acres
of Meadow, three hundred Acres of Pa-
sture, and forty Acres of Wood, with the
Appurtenances, in the Parish of *Bray* in
the said County of *Berks*, which *William*
Tieldall and *Rebecca* his Wife had demised
to the said *Thomas* for a Term which is not
yet expired, and into six other Mesuages,
six other Cotages, sixty other Acres of
Land, sixty other Acres of Meadow, and
three hundred other Acres of Pasture, and
forty other Acres of Wood, with the Ap-
purtenances, in the said Parish of *Bray*,
which *John Lidgold* the Younger had de-
mised to the said *Thomas* for a Term which
is not yet expired, he entered, and ejected
him the said *Thomas Barker* from his said
Farms, and did other Injuries to him, to
the great Damage of the said *Thomas*, and
against the Peace of the present King, &c.
and whereupon the said *Thomas Barker*, by

his Attorney *First Demise*.

complains, That whereas the said *William*
Tieldall

Tieldall and *Rebecca* his Wife, on the first Day of *April* in the Eleventh Year of the Reign of our Sovereign Lord *George* the Second, now King of *Great Britain*, &c. at the said Parish of *Bray*, had granted to the said *Thomas* the said six Mesuages, six Cotages, sixty Acres of Land, sixty Acres of Meadow, three hundred Acres of Pasture and forty Acres of Wood, with the Appurtenances; To have and enjoy the said Tenements, with the Appurtenances, to the said *Thomas Barker* and his Assigns from the twenty-fifth Day of *March* the last past, unto the full End and Term of five Years thence next ensuing fully to be complete and ended; by virtue of which said Demise, the said *Thomas Barker* entered into the said last mentioned Tenements with the Appurtenances, and was there

Second Demise. possessed: And also, That whereas the said *John Lidgold*, on the said first Day of *April* in the Eleventh Year aforesaid, at the said Parish of *Bray*, had demised to the said *Thomas Barker* the said six other Mesuages, six other Cotages, sixty other Acres of Land, sixty other Acres of Meadow, three hundred other Acres of Pasture, and forty other Acres of Wood, with the Appurtenances To have and enjoy those Tenements, with the Appurtenances, to the said *Thomas* and his Assigns, from the said twenty-fifth Day of *March* then last past, unto the full End and Term of five Years from thence next ensuing and fully to be complete and ended by virtue of which Demise the said *Th*

was entered into the said last mentioned Tenements, with the Appurtenances, and was thereof possessed, and being so thereof possessed, and also being possessed of the several Tenements aforesaid, with the Appurtenances as aforesaid, the said *Simon Winch* afterwards, *to wit*, on the said first Day of *April* in the Eleventh Year aforesaid, with Force and Arms, &c. entered into the said Tenements, with the Appurtenances, which the said *William* and *Rebecca* his Wife had in Form aforesaid demised to the said *Thomas Barker* for the said Term first above mentioned, which is not yet expired; and into the said Tenements, with the Appurtenances, which the said *John Lidgold* had in Form aforesaid demised to the said *Thomas Barker* for the said Term last above mentioned, which is not yet expired, and ejected him the said *Thomas Barker* in Form aforesaid, and other Injuries, &c. to the great Damages, &c. and against the Peace, &c. Whereupon he says, that he is injured, and has Damage to the Value of One hundred Pounds: And therefore he brings Suit, &c.

And the said *Simon Winch*, by *Not guilty.*
his Attorney, comes and defends the Force and Injury, when, &c. and says, That he is in nothing guilty of the Trespass and Ejectment aforesaid, as the said *Thomas* above complains against him: And of this he puts himself upon the Country; and the said *Thomas* likewise, *Issue.*
&c. It is therefore commanded to the Sheriff, *Venire & ruff, & ward.*

riff, that he cause to come before our Lord the King, on the Morrow of the Ascension of our Lord, wheresoever, &c. Twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. The same Day is given to the Parties aforesaid, &c.

*Hilary Term in the Fourteenth Year of the
Reign of King George the Second.*

*Declaration in
Ejection by
Original on a
double Demise.*

Lancaster. *JOHN Wilding, Thomas Har-
rison, &c.* were attached to
answer *Thomas Neale*, wherefore with Force
and Arms they entered into the Moiety of
the Manor of *Bretherton*, otherwise *Brotherton*,
with the Appurtenances, and into thirty
Mesuages, ten Cotages, four hundred
Acres of Land, two hundred Acres of
Meadow, and three hundred Acres of Pa-
sture, with the Appurtenances in *Bretherton*,
otherwise *Brotherton*, and *Much Hoole*
in the County of *Lancaster* aforesaid, which
James Duke of Athol demised to the said
Thomas Neale for a Term of Years which
is not yet expired; and also into the Moiety
of another Manor of *Bretherton*, otherwise
Brotherton, with the Appurtenances, and
into other thirty Mesuages, ten Cotages,
four hundred Acres of Land, two hundred
Acres of Meadow, and three hundred Acres
of Pasture, with the Appurtenances in *Bretherton*,
otherwise *Brotherton*, and *Much
Hoole* in the County of *Lancaster* aforesaid,
which the said *James Duke of Athol* al-
demised

demised to the said *Thomas* for a Term of Years which is not yet expired, and ejected him from his said several Farms and other Wrongs to him did to the great Damage of the said *Thomas Neale*, and against the Peace of our Sovereign Lord the King; and whereupon the said *Thomas* by *John Howard* his Attorney complains, that whereas the said Duke on the 20th Day of *March* in the ninth Year of the Reign of the present King, the Person in the County aforesaid had demised to the said *Thomas Neale* the said Moiety and Tenements aforesaid first above-mentioned, with the Appurtenances; To have and to hold the same Moiety and Tenements, with the Appurtenances, to the said *Thomas Neale* and his Assigns, from the ninth Day of the same *March* to the full end and Term of twelve Years from thence next ensuing, and fully to be complete and ended; by virtue of which Demise the said *Thomas Neale* entered into the same Moiety and Tenements, with the Appurtenances, and was possessed thereof; and the said *Thomas Neale* being so possessed thereof, the said *John Wilding, Thomas Harrison, &c.* afterwards, that is to say, on the said 20th day of *March* in the said ninth Year, with force and Arms entered into the said Moiety and Tenements first abovementioned, with the Appurtenances, which the said Duke demised to the said *Thomas Neale* in manner aforesaid, for the Term of Years aforesaid, which is not yet expired, and ejected the said *Thomas Neale* out of his

said Farm first abovementioned, and other
 Wrongs to him did, to the great Damage
 of the said *Thomas Neale*, and against the
 Peace of our Sovereign Lord the King
 and also that whereas the said Duke on
 the 10th Day of *October* in the 14th Year
 of the Reign of his said Majesty, at *Preston*
 aforesaid, had demised to the said *Thomas*
Neale the Moiety and Tenements above
 secondly mentioned, with the Appurte-
 nances; To have and to hold the same Moie-
 ty and Tenements, with the Appurtenances
 to the said *Thomas Neale* and his Assigns
 from the 29th Day of *September* then last
 past to the full End and Term of Seven
 Years from thence next ensuing, and fully
 to be complete and ended; by virtue of
 which said last Demise the said *Thomas Neale*
 entered into the same Moiety and Tene-
 ments, with the Appurtenances, and was
 possessed thereof: And the said *Thomas*
Neale being so possessed thereof, the said
John Wilding, Thomas Harison, &c. after-
 wards, that is to say, on the said 10th Day
 of *October* in the said 14th Year, with
 Force and Arms entered into the said
 Moiety and Tenements last abovemention-
 ed, with the Appurtenances, which the
 said Duke demised to the said *Thomas Neale*
 in manner aforesaid for the Term of Years
 aforesaid, which is not yet expired, and
 ejected the said *Thomas Neale* out of his
 said last mentioned Farm, and other
 Wrongs, &c. to the great Damage, &c.
 and against the Peace, &c. Whereupon
 the said *Thomas Neale* says he is injured
 and

and hath Damage to the Value of forty Pounds : And thereupon he brings this Suit, &c.

And the aforesaid *John Wilding, Tho-Plea.*
mas Harrison, &c. by *Robert Atkinson* their Attorney come and defend the Force and Injury, when, &c. and say, that they are in no wise guilty of the Trespasses and Ejectments aforesaid, as the said *Thomas Neale* above complains against them : And of this they put themselves upon the Country ; and the said *Thomas Neale* likewise : Venire a-
Therefore it is commanded to the Sheriff, ^{warded.}
that he cause to come before the Lord the King on the *Octave* of the Purification of the Blessed *Mary*, wheresoever, &c. twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Dorset, *A* *B.* complains of *C. D.* being in Ejectment on
to wit. the Custody of the Marshal of ^{a double De-}
the *Marshalsea* of our Lord the King before ^{mise, the last}
the King himself, for this, to wit, That ^{for Tithes.}
whereas *J. P.* Gentleman, on the 23d Day Swadling and
of *January* in the first Year, &c. at *W.* Piers, Cro.
in the County aforesaid had demised, ^{Jac. 615.}
granted, and to farm let to the said *A. B.* ^{Priest and}
twenty Acres of Land, fifty Acres of Mea- ^{Wood, Cro.}
dow, and fifty Acres of Pasture, with the ^{Car. 301.}
Appurtenances in the Parish of *W.* afore-
said ; To have and to hold the said Te-
nements, with the Appurtenances, to the
said *A. B.* and his Assigns, from the twenty-
fifth Day of *December* then last past, for
and during the Term of five Years from
E 6 2 thence

*Profert of the
Leafe.*

thence next ensuing, and fully to be complete and ended; and also whereas J. P. Esq; Father of the aforesaid J. P. on the same twenty-third Day of *January* in the first Year aforesaid, at *W.* aforesaid, by his Indenture sealed with his Seal, and to the Court of our said Lord the King now here shewn, bearing Date the same Day and Year, had demised and granted to the said *A. B.* all the Tithes of Grain, Corn, Hay, Lambs, &c. growing, coming, renewing and happening in two Closes within the Parish of *W.* aforesaid called *G.* containing by Estimation forty-three Acres; To have and to hold the said Tithes, with the Appurtenances, to the said *A. B.* and his Assigns, from the said twenty-fifth Day of *December* then last past, for and during the Term of five Years from thence next ensuing fully to be complete and ended; by virtue of which said several Demises the said *A. B.* afterwards, *to wit*, on the said twentieth Day of *January* in the first Year aforesaid, entered into the said Tenements and Tithes, and was possessed thereof until the said *C. D.* afterwards, *to wit*, on the twentieth Day of *January* in the first Year aforesaid, at *W.* aforesaid, with Force and Arms entered into the said Tenements and Tithes of the said *A. B.* and ejected, &c. [as before.]

*Judgment in
Ejectment by
Original, a-
gainst the ca-
sual Ejector by
Nil Dicit.*

And the said *D.* by *R. R.* his Attorney comes and defends the Force and Injury when, &c. and says nothing in Bar or Conclusion of the Action of the said *P.* but makes Default, by which the said *P.* remains unde-

defended

defended upon that Occasion, against the said *D.* for which it is considered, that the said *P.* recover against the said *D.* his Term yet to come of and in the said Tenements, with the Appurtenances; and upon this the said *P.* freely here in Court remits to the said *D.* all such Damages, Costs and Charges, as he the said *P.* has sustained by occasion of the Premises, [or as can be adjudged to him in this Behalf.] Therefore the said *D.* is free from these Damages, Costs and Charges, &c. and upon this the said *P.* prays the Writ of our Lord the King to be directed to the Sheriff of the County aforesaid, to cause him to have Possession of his said Term yet to come of and in the said Tenements, with the Appurtenances; and it is granted to him, returnable, &c.

*Remittit
damna.*

And the said *D.* by *R. R.* his Attorney, comes and defends the Force and Injury, when, &c. and upon this the said *P.* prays that the said *D.* may answer his said Declaration, upon which the said Attorney of the said *D.* says, that he is not informed by the said *D.* of any Answer to be given for the said *D.* to the said *P.* in the said Complaint, and he says not any thing else thereupon in Bar or Preclusion of the said Action of the said *P.* by which the said *P.* remains undefended, upon that Occasion, against the said *D.* for which it is considered, that the said *P.* recover against the said *D.* the Possession of his said Term yet to come of and in the said Tenements, with the Appurtenances,

*Judgment by
Non Informatus in
Ejectionem in Ori-
ginal.*

Inquiry of Damages awarded.

and his Damages by occasion of the said Trespass and Ejectment ; but because it is unknown what Damages the said P. has sustained by occasion of the said Trespass and Ejectment, It is commanded to the Sheriff, that by the Oath of twelve good and lawful Men of his Bailiwick, he diligently inquire what Damages the said P. has sustained, as well by occasion of the said Trespass and Ejectment, as for his Costs and Charges by him about his Suit in this Behalf expended ; and that the Inquisition which, &c. the Sheriff do make appear to our Lord the King from the Day

wheresoever, &c. under his Seal, &c. and the Seals, &c. The same Day is given to the said P. &c. And upon this the said P. prays the Writ of our Lord the King, to be directed to the Sheriff of the County aforesaid, to cause him to have Possession of his said Term yet to come of and in the said Tenements, with the Appurtenances ; and it is granted to him, returnable, &c.

Writ of Possession.

GEORGE, &c. To the Sheriff of Sh. Greeting : Whereas T. W. late in our Court before us at Westminster, by Bill without our Writ, and by the Judgment of the same Court, recovered against J. W. his Term yet to come of and in one Mesuage, one Garden, &c. with the Appurtenances, situate, lying, and being in P. in your County, which

which *W. M.* on the first Day of *October* in the Eighth Year of our Reign demised to the said *T.* for a Term of Years not yet expired, *to wit*, from the 28th Day of *September* then last past, to the full End and Term of five Years thence next ensuing, and fully to be complete and ended; by virtue of which Demise, the same *T.* entered upon the same Tenements with the Appurtenances, and was thereof possessed, until the said *J.* afterwards, *to wit*, on the same first Day of *October* in the Eighth Year aforesaid, with Force and Arms entered into the said Tenements, with the Appurtenances, and him the said *T.* from his Farm aforesaid, the said Term then and there not being expired, ejected, drove out and removed, and him the said *T.* hath withheld from his Possession thereof, and still both withhold, whereof the said *J.* is convicted, as appears to us upon Record: Therefore we command you, that without Delay you cause the said *T.* to have his Possession of his Term aforesaid yet to come of and the Tenements aforesaid, with the Appurtenances, and in what Manner you shall have executed this our Writ, make appear to us at *Westminster*, on, &c. And give there then this Writ. Witness,

Where the Death of the Plaintiff in Ejectment shall not prevent Judgment.
 Motion in Arrest of Judgment, on a special Verdict in Ejectment; for that the Plaintiff is dead, denied *per Cur.* For that between the

the Lessor of the Plaintiff and the Defendant there was another Cause tried at the same Assizes, and the Verdict was not drawn up, but by Agreement was to ensue the Determination of this Verdict, and the Title to go accordingly: This Submission was an implicit Agreement not to take Advantage of such Occurrences, as the Death of the Plaintiff in Ejectment, whom we know to be not wise concerned in Interest, and often but an imaginary Person: It was also said to have Judgment, that there lived in the County where the Lands are, a Man of the same Name with him that was made Plaintiff. *Cur.* this is sufficient, and was there any of that Name *in rerum Natura*, we would intend he was the Plaintiff. *1 Mod. 252.*

Plaintiff in Ejectment under the Control of the Court, and cannot release.

After Recovery in Ejectment the Lessor brought an Action for the Mesne Profits: the Lessee released the Action, the Court set aside the Release, saying the Lessee is in the Nature of an Officer of the Court and within the Power and Control of the Court. *Skinner 246.*

And liable to be punished if he does release.

The Court takes notice judicially, that the Lessor of the Plaintiff is the Person interested, and therefore they punish the Plaintiff if he releases the Action, or releases the Damages. *1 Mod. 252.*

Of Defendant's recovering his Costs, where the Lessor of the Plaintiff was a Peer, and beyond Seq.

Ejectment upon the Demise of the Duke of Richmond; Verdict and Costs *pro Def.* the Plaintiff not being to be found, and the Duke being a Person privileged by Parliament, and at this time an Ambassador beyond Seq.

beyond Sea, so that no Costs could be had against him; the Court ruled, that the Duke's Agents *Wrenham* and *Tilson*, who gave the Name of the Plaintiff to *Hill* the Duke's Attorney, should pay the Costs, or produce a Plaintiff able to pay them, and committed them till they did so. 2 *Lev.* 66.

Levinz moved that a Suit in Ejectment ^{Proceedings in} in this Court might be stayed till Costs ^{Ejectment} upon a Nonsuit in C.B. upon the same ^{stayed till Costs} Title were paid; the Court advised upon ^{of a Nonsuit} it, and afterwards this Term the Chief ^{in C. B. on} Justice said it was proposed to all the Ju- ^{same Title} were paid. stices at *Serjeants Inn*, and they thought it reasonable, as well where the Suit was in another, as in the same Court, and that all the Courts would be conformable in this Matter. *Anonymus*, *Trin.* 30 *Car.* 2.

In Ejectment Verdict *pro Quer.* and before ^{Lessor of the} Judgment entered the Lessor, who had but ^{Plaintiff, who} an Estate for Life, dies; Motion to stay ^{was but Te-} Judgment, because the Lessee's Title was ^{nant for Life,} determined. *Hales*, We can neither stay ^{dies after Ver-} Judgment nor Execution, the Plaintiff ^{dict, and before} Judgment. must have his Costs and Damages, for the Declaration was good, and there was a Term and an Ejectment, and there is nothing in the Pleading whereby we can take notice of the Lessor's Estate. *Twisden*, You should have indorsed the Lessor's Title on the Back of the Postea. *Anonymus*, *Pas.* 23 *Car.* 2.

Ejectment wherein a special Verdict, and ^{The Term in} before Judgment the Term expires, Mo- ^{Ejectment not} tion to enlarge the Term. *Cur.* You may ^{to be enlarged} without Con- have sent.

have Execution for your Damages and Costs, but we never enlarge the Term without Consent of Partys. *Waters and Rumsey, Pas. 27 Car. 2.*

Term in Ejectment after special Verdict was expired, the Court refused to enlarge it without Consent. *Carth. 402.*

Of setting aside Judgment in Ejectment obtained fraudulently, one Man personating another.

Serjeant *Wilmot* moved for Restitution of Possession, the Plaintiff obtained Judgment in Ejectment by Default; for a Man personating another made Affidavit of Notice, and so the Tenant was turned out of Possession by Execution. *Hales*, If it appears to be a Practice, you shall have Restitution. *Twisden*, In *Winn's Case*, and in other Cases, the Court ordered the Party to bring him that made the Affidavit, and then made such a Rule as the Case required. *Anonymus Pas. 23 Car. 2.*

Declaration a Lease for five Years, when the Lessor had but an Interest for three Years.

Ejectment, Lessee for three Years makes a Lease for five Years to *A.* who brings this Action, and this is specially found. *Hales*, The Plaintiff cannot maintain his Ejectment, for there is no such Lease as he declares upon; the Lessor having but an Interest for three Years cannot make a Lease for five Years, and if the Lessee recover, he must recover a Term for five Years, or nothing, for Judgment for a lesser Term will not be warranted by the Declaration. *Jones and Drinkwater, Trin. 27 Car. 2.*

Amendment in Ejectment denied.

Trial at Bar in Ejectment, *Mich. 8 W. 3. 1696.* Verdict *pro Quer.* the Declaration was of *Trinity Term* before, the Demise was laid on 10th April 1697. instead of 1696. *Habend.* from

from 25th March then last past; Motion to amend by striking out *Septimo* and inserting *Sexto*, denied. *Carth.* 401. *Aliter* in case of a Judgment by Confession. *Ib.*

Error.

A Writ of Error is a Writ of Right, a Remedy at the Common Law, founded upon the Fallibility of Mankind.

Where a Judgment is given in the Common Pleas, or in any inferior Court of Record, the Party against whom the Judgment is given, apprehending himself grieved thereby, and that the Judgment is against Law, or upon irregular Process, may have a Writ of Error issuing out of Chancery, returnable in this Court.

No Fine, Common Recovery or Judgment, in any real or personal Action, shall be reversed for Error, unless the Writ of Error be brought and prosecuted with Effect within twenty Years. 10 & 11 W. 3. &c.

14. Bail cannot bring Error of the principal Judgment, nor can the Principal and the Bail join in Error. 1 Lev. 137.

Judgment against A. and B. *Sci. Fa.* Where Audita against C. as Administrator of A. the surviving Debtor, and Judgment thereon; B. was the surviving Debtor, and not C. the Administrator must bring an *Audita Querela*; a Writ of Error will not lie in this Case. *Carth.* 282.

Verdict for the Plaintiff, who died before verdict given, Error port; the Plaintiff in Error dies.

Error, after alledging the Death of the Plaintiff in the original Action, should conclude by praying a *Scire Facias ad audiendum Errores* against the Executor or Administrator of the Plaintiff in the original Action; and if the Sheriff returns that he is alive, then he may come in and plead *In nullo est Erratum*. But if he returns *Scire feci* the Executor or Administrator, that will be sufficient Ground for the Court to proceed and examine Errors, &c. *Carth.* 338.

Error in Ejectment lies before Inquiry. *Per Holt C. J.* a Writ of Error will lie on a Judgment in Ejectment *quod Recuperet*, &c. before a Writ of Inquiry executed, for that is only as to the Damages. *Carth.* 205. 3 *Cro.* 635.

Writ of Error a Superseas. A Writ of Error is in Judgment of Law a *Superseas*, until the Errors are examined, affirmed or reversed.

Except. If the Plaintiff does not shew his Writ of Error to the other Party, or get it allowed by the Clerk by indorsing a *Recepi* upon it within four Days (which Time the Court gives as convenient Time for putting in Bail according to the Statute) the Writ of Error is no *Superseas*. 1 *Ventris* 255.

Except. Also, if before the Writ of Error the Sheriff returns a *Fieri Feci*, & *non inveni emptores*, the Execution is not to be undone. 1 *Ventris* 255.

As soon as allowed. The Writ is a *Superseas* from the Time of the Allowance, and that is Notice of itself; but if the Defendant have Notice before the Allowance, it is from the Time of that

that Notice a *Superfedeas*. But though the Allowance is Notice of itself *quoad* to supersede the Execution, yet to bring the Attorney into Contempt, he must have had Notice.

If the Writ of Execution be executed *As to an Execution not executed.* before a Writ of Error allowed or Notice, it may be returned afterwards. The utmost Length of Time the Law allows for executing, is the Day whereon the Writ is returnable, and it is not executable any longer that Day than while the Court sits. So *Q. as to the Fraction of a Day.*

long as it is executable but not executed, the Allowance of a Writ of Error is a *Superfedeas*, but not afterwards. *Salk. 321.*

Judgment for the Plaintiff, Execution taken out, and Error brought, which was sealed about an Hour before Execution executed. The Money ordered to be brought into Court, and not delivered to the Plaintiff. *1 Ventris 30.*

A Writ of Error being brought in the *Error in Exchequer* Chamber, on a Judgment by *chequer* Original in *Banco Regis*, is merely void, *Chamber or Judgment by Original in Banco Regis void, and no Superfedeas.*

Judgment against several Defendants, *Several bring* they all join in a Writ of Error, one of *Error, and one of them dies ;* them dies before the Return of the Writ. *no Execution without Leave.*

Per Cur. Executions may be taken out against the surviving Defendants without a *Sci. Fa.* But a Writ of Error being brought and allowed, and the Execution once superseded, the Plaintiff cannot sue out Execution until the Court is informed of the

Abatement of the Writ of Error, for in Striçtness the Matter ought to be suggested on Record, and the Court ought to adjudge the Writ abated, &c. *Carth. 404. Vid. Salk. 219.*

On what
Judgment
Writ of Error
shall be no Su-
peredeas
without Bail
by Stat. 3.
Jac. 1.

By the Statute 3 Jac. 1. c. 8. Execution shall not be stayed upon any Writ of Error for reversing any Judgment in any Action or Bill of Debt upon any single Bond for Debt, or upon any Obligation, with Condition for the Payment of Money only, or upon any Action or Bill of Debt for Rent or upon any Contract, unless the Person suing such Writ of Error shall with two sufficient Sureties, such as the Court shall allow of, be bound by Recognizance in double the Sum recovered to prosecute the Writ of Error with Effect, and pay (if Judgment be affirmed) all Debts, Damages and Costs, adjudged on the former Judgment, and all Costs and Damages to be awarded for delaying Execution.

On what by
Stat. 13
Car. 2.

By the Statute 13 Car. 2. stat. 2. c. 2. § 9. no Execution shall be stayed by Writ of Error after Verdict and Judgment thereon in any Action of Debt upon 2 E. 6. for not setting out of Tithes, Action upon the Case upon Promise for Payment of Money, Action sur Trover, Covenant, Detinue and Trespafs, unless such Recognizance as by Stat. 3 Jac. 1. be first acknowledged.

On what by
16, 17 Car. 2.

And by the Statute 16, 17 Car. 2. c. 8. § 3. no Execution shall be stayed by Writ of Error after Verdict and Judgment in any personal Action, unless such Recognizance

ance be first acknowledged, nor upon any Judgment after Verdict in Dower, or Ejectment *In Dower or Ejectment the Plaintiff in Error shall become bound, &c. But Writs of Error brought by Executors and Administrators of Plaintiff in Error sufficient.* popular Actions, Actions on penal Statutes (except on 2 E. 6.) Indictments, Presentments, Informations and Appeals, are excepted.

On Error in Ejectment, the Plaintiff in Error being in a remote Part of the Kingdom, found two sufficient Men to be his Bail, who were bound in a Recognizance, *Error in Ejectment, Plaintiff may find Bail, need not be bound himself.* &c. The Court held, that the Intent of the Statute, which was to secure the Defendant in Error, was hereby fully observed, because this Bail is better than the Plaintiff's own Recognizance. *Carth. 121.*

Writs of Error out of inferior Courts shall in all Cases be *Superfedeas's* without putting in Bail, they being omitted out of the above Statutes. *No Bail on Writs of Error from inferior Courts.*

There is no Bail to be put in upon bringing a Writ of Error upon a Judgment in an Action of Debt upon Bond conditioned for Performance of Covenants, or upon a Bail-Bond: But where Bail is required to a Writ of Error upon a Judgment in an Action of Debt upon a Bond, the Bond must be for the Payment of Money only, and that is by the very Words of the Statute. *Nor upon Judgment on Bond for Performance of Covenants, or a Bail-Bond.*

If an Action of Debt be brought upon a Bond to perform Covenants, and there is Judgment by Default, without craving

Oyer

Oyer of the Condition, there upon a Writ of Error brought, the Plaintiff in Error must put in Bail, because it doth not appear to the Court upon the Record, that the Condition was for Performance of Covenants.

Bond to pay so much as J. S. should declare, &c. Error brought, no Superseas without Bail. Debt on Obligation conditioned to pay to B. so much Money as J. S. should declare upon an Account by him stated between Plaintiff and Defendant to be due from the Defendant to the Plaintiff; Defendant pleads J. S. had not declared any thing due to the Plaintiff. Issue thereon; Judgment *pro Quer.* and Error brought, Plaintiff in Error must put in Bail, or Execution may go, for this Obligation is made for the Payment of Money only, which though it be not certain when the Obligation is made, is yet certain before the Action brought. 1 Lev. 117.

Executor or Administrator bringing Error on Judgment de Bonis Propriis, must put in Bail. If Judgment be against an Executor or Administrator *de bonis Propriis*, and he brings a Writ of Error, he must put in Bail in such Cases, as required by the above Statutes, and pay Costs if Judgment be affirmed; but if the Judgment be *de Bonis Testatoris* only, he shall neither put in Bail nor pay Costs.

A *Scire Facias* against the Defendant as Administrator on a *Devastavit* alledged, and Judgment *de bonis Propriis*, on which he brought Error, and by the whole Court he shall find Bail, for he being here charged in his proper Goods is not as in the Case where an Administrator is charged in the Testator's

Testator's Goods, but here it is as in his own Right. 1 Lev. 245.

Bail on a Writ of Error cannot surrender their Principal in Discharge of themselves, for the Condition of the Recognizance is, that the Plaintiff in Error shall prosecute his Writ of Error with Effect, and if Judgment be affirmed, shall satisfy and pay the Debt, Damages and Costs recovered, together with such Costs as shall be awarded by occasion of the Delay of Execution, or else that they (the Bail) shall do for him.

To obtain a Writ of Error, you must apply to the Cursitor of the County where the Action is laid, and he will make out the Writ for you. You write a *Præcipe* or Note of Instructions for the Cursitor, according to the Nature of the Case, in the following Manner:

London. Writ of Error for William Cave, Præcipe at the Suit of Ferdinando Hoare, on a Judgment in Case, given in the Court of Common Pleas.

Dated

Ret.

When you have got the Writ of Error from the Cursitor, you carry it to the Clerk of the Errors of that Court in which the Judgment was given, and pay him for the Allowance of it, and he will give you a Notice in Writing, to be delivered to the Attorney on the other Side, signifying the

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F f

Allow-

Allowance of the Writ of Error, which Notice you should deliver immediately.

Writ of Error to be allowed as soon as sealed.

As soon as the Writ of Error is sealed, it ought to be allowed with the Clerk of the Errors in that Court where the Judgment was obtained.

Proceeding after Writ of Error sealed, no Contempt

If the Party proceeds after the Writ of Error sealed, it is no Contempt in him unless he had Notice of it.

Four Days after Allowance to put in Bail.

The Plaintiff in Error has four Days after the Allowance to put in Bail, and the Plaintiff in the Action during that Time cannot take out Execution, yet the Act of Parliament says, there shall be no Stay of Execution till Bail put in.

If no Exception to Bail within 20 Days after Notice, Bail to be allowed.

As soon as Bail is put in, Notice of it ought to be given to the Defendant or his Attorney; and if the Defendant does not except against them within twenty Days after such Notice, the Bail shall be allowed. *Mich. 5 W. & M.*

Upon Rule for better Bail 4 Days after Notice to justify or put in better Bail.

If the Plaintiff in the Action thinks the Bail insufficient, he may have a Rule from the Clerk of the Errors for better Bail; and if the Bail does not justify, or better Bail be not put in within four Days after Notice of the Rule, the Plaintiff in the Action may sue out Execution; but the Writ of Error remains, and the Plaintiff in Error may proceed thereon, for the *Superfedeas* to the Execution is only taken away.

Plaintiff in Error in Ejectment to be Bail himself, and justify, if required.

The Plaintiff in Error after a Verdict in Ejectment is allowed to be Bail himself but shall justify in Court, if required; for

the Statute says, that he shall give his own recognizance, yet it is to be in double the value of the Year's Rent, and he ought to be examined if he is worth so much.

On the Allowance of the Writ of Error, ^{Rule to transcribe.} and putting in Bail (where Bail is required,) the Defendant in Error may have a Rule

from the Clerk of the Errors for the Plaintiff to certify or transcribe the Record, which if he does not by the Time appointed by the Rule, a *Nolle Prosequi* may be entered.

If a Writ of Error on a Judgment in the ^{Time taken by the Clerk of the Errors to transcribe.} *Common Pleas* be returnable the first Return of any Term, the Clerk of the Errors

takes the whole Term to transcribe, and does not bring in the Transcript till the last day of that Term; and if it be returnable, on any other Return he takes the whole Vacation to transcribe, and brings in the Transcript on the first Day of the following term.

The Plaintiff in the Action as soon as ^{Sci. Fa. may be sued out as soon as Transcript brought} the Transcript is brought into the Office of the Chief Clerk, and entered in the Book for that Purpose, may make out a *Sci. Fa.*

Sci. Facias quare executionem non.

If brought in before the *Essoin* Day of ^{How the Scire Facias to bear Teste.} any Term, the *Scire Facias* may bear Teste the last Day of the preceding Term, and if brought in within the Term, it may be entered the first Day of the Term.

The Plaintiff in Error ought to enter the ^{If Plaintiff in Error don't enter Transcript Defendant may.} Transcript on Record the same Term it is brought

brought into the Office, and if he neglects to do it, the Defendant in Error may, because they are both as it were Plaintiffs.

Transcript to be kept no longer than till Copy made.

The Attorney who first takes the Transcript out of the Office ought to keep it no longer than until he can make a Copy of it, and then ought to bring it back, and get his Name discharged in the Book, so that the Attorney on the other Side may likewise take it, and be enabled to make Copy of it.

How Sci. Fa. to be returnable.

Where the Proceedings in the inferior Court were by Original, the *Scire Facias* *quare executionem non*, and all the subsequent Writs must be returnable at a general Return, where by Bill at a Day certain.

How in Error from the Palace Court.

If Error be brought on a Judgment in the Palace Court, the *Scire Facias* must be returnable on a general Return, the Day given below being their Court-Days, and not such Return-Days as in this Court.

On Return of Sci. Fa. Rule for Judgment.

On the Return of the *Scire Facias* where a *Scire Feci* is returned, or of the second *Scire Facias* where two *Nibils* are returned, the Plaintiff in the Action may enter a Rule for Judgment, which is out in four Days, and he is not bound to give Notice of it, or to call for an Assignment of Errors.

No Oyer or Plea to it, save an Assignment of Errors.

The Court will not grant *Oyer* of the *Scire Facias*, or allow any Plea to it, save an Assignment of Errors.

Where a Scire facias to hear Errors is not well brought.

A *Scire facias ad audiendum Errores* is not well brought before the Record of the Judgment be certified into the Court, to reverse which the Writ of Error was brought, and

Errors assigned thereupon ; for there is no Record in Court to warrant the granting the *Scire facias* before the Record of the Judgment is certified, and Errors thereupon assigned.

If the Defendant in Error does not appear on the *Scire facias* to hear Errors, the Cause must be set down to be heard by the Court, and the Plaintiff in Error shall be heard *ex parte*. Plaintiff in Error heard ex parte, if Defendant does not appear on Sci. Fa.

If the Plaintiff in Error assigns Errors, which must be always signed by Counsel, he must deliver a Copy of them to the Attorney for the Defendant in Error, before the Time given by the Rule on the *Scire Facias* is expired. Errors to be signed by Counsel, and Copy delivered.

If they be general Errors, the Defendant in Error may immediately plead *In nullo est Erratum*, and enter both on the Roll, pay the Plaintiff in Error's Attorney 2 s. 4 d. for the same. If general Errors, Defendant may immediately join in Error.

If the Plaintiff in Error assigns for Error, that there is no Original or Warrant of Attorney, or alleges Diminution, that Part of the Record remains in the inferior Court not certified, and prays a *Certiorari*, the Defendant in Error may immediately enter a Rule to return the *Certiorari*, and serve the Plaintiff's Attorney with a Copy of it. Defendant in Error may have a Rule to return Certiorari.

If the *Certiorari* be not returned and filed in the Office by the Time limited in the Rule, or within four Days after Service of it, the Defendant in Error may join *In nullo est Erratum*, and enter on Record a Non If Certiorari be not returned and filed, Defendant may join in Error.

mist Breve, taking no Notice of the Diminution. *Vide Salk. 267.*

If Plaintiff's *Certiorari* be for an Original, &c. of a wrong Term, Defendant

may sue out a *Certiorari*. When *Certiorari* returned Defendant may join In *nullo est Erratum*.

No Diminution after In *nullo est Erratum* pleaded.

No Diminution in Records out of inferior Court.

Court will award a *Certiorari* ad informandum Conscientiam.

Either Side may move for a *Concilium*.

Books to be delivered two Days before Argument.

If a *Certiorari* be prayed to certify an original Writ or Warrant of Attorney of a wrong Term, and the Chief Justice or *Justos Brevium* return on it, that there is no Original or Warrant of Attorney of that Term, the Defendant in Error may make a Suggestion of the right Term, and pray a *Certiorari*, which when returned and filed, he may join In *nullo est Erratum*, and enter it on the Roll, paying the Plaintiff's Attorney 2 s. 4 d. for it.

After In *nullo est Erratum* pleaded, no Diminution can be alledged either by the Plaintiff or Defendant in Error without Leave of the Court.

In Record out of an inferior Court no Diminution can be alledged, and the Court must take them as they find them.

Although no Diminution can be alledged, yet the Court to inform their Conscience will award a *Certiorari* to remove the Original or other Proceeding into this Court for the Affirmance of the Judgment, though the Court will not do it to reverse the Judgment.

Upon the Joinder in Error either Party may move for a *Concilium*, and set the Cause down with the Clerk of the Papers for the Judgment of the Court.

Two Days at the least before the Cause comes to be argued Paper Books are to be delivered to the Judges, to the Chief Justice and Senior Puisse Judge by the Plaintiff in Error.

Error, and to the other Judges by the Defendant in Error. V. Reg. Pas. 2 Jac. 2. *antea* fo. 188.

As the Court will hear no Argument ^{Party who expects Judgment should deliver all the Copies.} unless Books be delivered to all the Judges, it behoves the Attorney who expects the Judgment of the Court to be for his Client to deliver all the Books, especially as he will be allowed in Costs for those Copies he makes for the other Side. *Mich. 17 Car. 1.*

The Court has refused to hear any Argument on the Side of the Party who hath neglected to deliver Books, though he has been willing to pay the other Side for them. ^{Party who delivers no Books not to be heard.}

The Course is the same as to the Delivery of Books in Demurrers, and other like Cases which come before the Court for their Judgment. ^{Same Course in Demurrers.}

No Execution for Costs occasioned by the Delay of Execution shall issue against the Bail in the original Action, though they are liable for the Debt and Costs, or Damages recovered in the original Action; but the Bail in the Writ of Error are answerable for the whole. ^{Bail in original Action not liable to Costs in Error.}

If no Errors are assigned, the Plaintiff in Error is to enter the *Scire Facias* (if one) of the Term in which it is returnable, and if two of the Term in which the first is returnable, with an Award of Execution, upon which any Writ of Execution may issue against the Defendant or his Goods, or *Capias ad Satisfaciendum* against the Defendant being first returned, *Non est Inventus*, a *Scire Facias* may issue against his Bail. ^{If no Errors, of what Term Sci Fa. to be entered. And Execution may thereupon issue.}

Method of
non-prossing a
Writ of Error.

Upon this Judgment on the *Scire Facias* there being no Costs, the Plaintiff in the Action, to obtain the Costs he has been put to by the Writ of Error, must proceed to non-pross it; and in order thereto must enter a Rule to assign Errors *de Record* given by the Secondary, and serve the Attorney of the Plaintiff in Error with a Copy of it; and if no Errors be assigned by the Time limited by the Rule, or within four Days after Service, he may sign a Non-pross and have Costs taxed according to the Statute.

One Execution against Defendant for Debt and Costs in the original Action, and Costs in Error.

If no Execution has been taken out on the Judgment entered on the *Scire Facias*, one Execution as against the Defendant may be sued out for Debt and Costs, and Damages in the original Action, and for the Costs on the Non-pross.

Same Proceedings on assigning Error *de Record* as on *Sci. Fa.*

If the Plaintiff in Error, being served with a Rule to assign Errors *de Record*, does assign Errors (as he may) although Execution of the Judgment on the *Scire Facias* be actually executed, the Proceedings must be the same as if Errors had been assigned at first upon the *Scire Facias*; and if the Judgment be reversed, the Plaintiff in Error shall have Restitution.

No Costs on Amendment of Writ of Error.

No Costs are to be paid on any Amendment of Writs of Error, pursuant to the Statute of Amendments 5 Geo. I. c. 15. But if the Writ of Error be quashed, the Defendant in Error shall have Costs. *Et vide Fitz Gibbon* 201.

Costs on Amendment of Assignment of Errors.

If the Plaintiff moves to amend the Assignment of Errors, the Rule is with Costs because

because he comes for a Favour of the Court.

Fitz-Gibbon 268.

If the Defendant in the original Action does not bring his Writ of Error before Execution executed, the Plaintiff shall not

No Costs where Execution executed, and why.

have his Damages and Costs either on Non-suit, Discontinuance, or Judgment affirmed, because the Writ of Error is not then in *Dilation Executionis.*

In Ejectment Judgment *pro Quer.* and Execution of his Damages and Costs; Error brought, and Judgment affirmed; Plaintiff

Where Plaintiff in Ejectment shall have no Costs in Error.

could not have Costs for his Delay and Charges; for no Costs were in such Case at the Common Law, and *Stat. 3 H. 7. c. 10.* gives them only where Error is brought in Delay of Execution; so *19 H. 7. c. 20.* and though the Plaintiff had not Execution of his Term, yet he had it of his Costs. *1 Ventris 88.*

In Replevin, Plaintiff nonsuited, Writ of Error brought in *B. R.* and Judgment affirmed, Defendant in Error shall have no

Defendant in Replevin shall have no Costs.

Costs *pro dilatione Executionis, &c.* (he being Plaintiff, and having Judgment for a *Return. Habend.*) because he is not within the Letter of any of the Statutes which shall be taken strictly, Costs being in Nature of a Penalty. *Carth. 179.*

If on Judgment in *Formedon* in Remainder, Plaintiff in Error bring Error, and Judgment be affirmed, he shall pay no Costs, because none

Plaintiff in Formedon no Costs in Error.

recoverable at first. *Ibid. 1 Cro. 3 Cro. 658.* Error in *B. R.* port *per Adm. Judic.* affirmed, he shall pay no Costs, for he is not

Administrator shall pay no Costs in Error.

Person within the Intent of the Statute.

13 Car. 2. c. 2. Carth. 281. *Sed vide antea*
fo. 432.

*When a Writ
of Error abates
by the Death
of the Parties.*

In a Writ of Error, if the Defendant die the Writ is not abated, otherwise if the Plaintiff die, *Sir H. Thyn & Corie. A Sci. Po. ad audiend. Errores* went against the Executor when the Defendant in Error died
1 *Ventris* 34.

*When a Writ
of Error abates
by the Death
of the Plaintiff
in Error, and
when not.*

If the Plaintiff in Error dies before Errors assigned, the Writ abates, and the Defendant in Error may sue out a *Scire Facias* to revive the Judgment against his Executor; but if he dies after Error assigned and a Joinder in Error, it does not abate and the Defendant in Error may proceed to get the Judgment affirmed, but must then revive it against the Plaintiff in Error.

*Abates not by
the Death of
the Defendant
in Error.*

If the Defendant in Error dies before or after Errors assigned, the Writ does not abate; if before Errors assigned, the Plaintiff is bound to transcribe, and the Executor of the Defendant in Error may sue out a *Scire Facias* to shew Cause why he the Executor should not have Execution; upon which the Plaintiff is to assign Errors; and the Proceedings in this Case, as likewise where the Defendant in Error dies after Assignment of Errors, are to be carried on as if the Defendant was alive till the Judgment be affirmed, and then the Executor of the Defendant in Error must revive by *Scire Facias*.

*When in A-
batement of
Writ of Error
Execution may
go, tho' a new Writ be brought.*

If the Writ of Error be abated by the Act of the Plaintiff in Error, the Defendant

an Error may take out Execution, although a new Writ of Error be brought.

If a Writ of Error in Ejection, &c. abates by the Act of God, a second Writ will be a *Supersedeas*; otherwise where it abates by the Act of the Parties. *1 Ventris*

If there be divers Records between the same Parties, the inferior Court may return which they please, they being warranted by the Writ so to do. *Of returning the Writ where divers Records.*

If Judgment be given after the Teste and before the Return of the Writ of Error, the Record shall be removed; but if Judgment be entered after the Writ of Error is returnable, the Writ only is to be returned, and that no Judgment is yet given. *How if Judgment given after the Return of the Writ.*

If the Record vary from the Writ of Error, yet the inferior Court ought to remove it. *Record varying from the Writ.* *1 Ventris 96.*

A Writ of Error, that bears Teste before the Judgment given, is good to remove the Record, so as Judgment be given before the Return of it. *1 Ventris 255.*

General Errors assigned, and Want of Original and Warrants of Attorney, to which *In nullo est Erratum* pleaded, Plaintiff moved to amend the Errors assigned, but was denied. *After In nullo est Erratum, can't amend general Errors.*

Assignment of Errors, Replication *In nullo est Erratum*, Motion to amend Assignment of Errors denied, because it was not to affirm, but to reverse a Judgment. *Cartb. 367.*

By Statute 5 Geo. 1. c. 15. all Variances and Defects, which vary the Writ of Error from *Stat. 5 Geo. 1. Of Amendments.*

Where the Plaintiff brings Error, and the Court reverses, they give a new Judgment; otherwise if the Defendant brings Error.

A Scire Facias against Bail wrong.

Writ of Error no Superseas till allowed.

Bail in four Days after Allowance.

from the Record, are amendable. No Costs are to be paid on such Amendments.

Where in *Communi Banco* Judgment is for the Plaintiff, and the Defendant brings Error, there shall only be Judgment to reverse the former Judgment, for the Suit is only to be eased of that Judgment; but when the Plaintiff brings Error, the Judgment shall not only be a Reversal, but the Court shall give such Judgment, as the Court below should have done; for this Writ of Error is to revive the first Cause of Action and to recover what he ought to have recovered by the first Suit wherein the erroneous Judgment was given. *Salk. 262. Carth. 253.*

Error on a Judgment in the *Marshalsea* Court, *Sci. Fa.* against the Bail reciting the Judgment, *Quod quidem Record. certis de Causis coram nobis Venire fecimus.* Quashed. *Sci. Fa.* should be thus, *Quod quidem Record. coram nobis causa Erroris corrigend. Venire fecimus.* *Carth. 391.*

Error in the Exchequer Chamber.

Every Attorney who shall sue out any Writ of Error on any Judgment of the Court returnable in the *Exchequer Chamber*, shall forthwith allow such Writ of Error with the Clerk of the Errors of the Court for the Time being, and no Execution shall be stayed until such Allowance. *Eaff. 36 Car. 2.*

Where Special Bail is required, if the Plaintiff upon such Writ of Error does not within four Days after the Allowance there

of put in Special Bail, the Plaintiff in the Action may proceed to take out Execution, notwithstanding such Writ of Error. *Easter 16. Easter 36 Car. 2.*

If Special Bail is put in, the Plaintiff in Error, or his Attorney, must forthwith give Notice thereof to the Defendant in Error, or his Attorney; and if the Defendant in Error does not except against such Bail within twenty Days after such Notice, such Bail shall be allowed. *Mich. 5 W. & M.*

If the Plaintiff in Error, after Errors are assigned in the *Exchequer* Chamber, intends to argue the same, he must give ten Days Notice thereof to the Clerk of the Errors in the same Court before they shall be argued by Counsel on either Side; and the Attorney for the Plaintiff in Error shall deliver four Copies of the Book to the Justices of the *Common Pleas*, and the Attorney for the Defendant shall deliver four Copies to the Barons of the *Exchequer* four Days before the Hearing of the Cause. *Easter 33 Car. 2.*

The *Exchequer* Chamber doth not award *No Sci. Fa. in Sci. Fa. ad audiend. Errores*, but Notice is given to the Parties concerned. *1 Ventris*

An erroneous Judgment given in this Court was reversible only in Parliament, till the Statute 27 *Eliz. c. 8.* whereby upon any Judgment given in the Court of King's Bench in Debt, Detinue, Covenant, Account, Action upon the Case, *Ejectione* *firmæ*, or Trespass first commenced there (where

Notice of Bail, and if no Exception in twenty Days, to be allowed.

Ten Days Notice to the Clerk of the Errors before Argument.

Plaintiff to deliver four Books to Judges C. B. Defendant sent to the Barons.

No Sci. Fa. in Exchequer Chamber.

Statute 27 Eliz. c. 8. Jurisdiction of Exchequer Chamber in Error.

(where the King is not a Party) a Writ of Error may be directed to the Justices of the *Common Bench*, and Barons of the *Exchequer*, or any Six of them (being of the Degree of the Coif) who shall reverse or affirm such Judgment other than for Error concerning the Jurisdiction of the *King's Bench*, or Want of Form in any Writ, Record, Plaint, Bill, Declaration, or other Proceeding, and after Reversal or Affirmance the Record shall be remanded, that the Court of *King's Bench* may proceed thereupon.

Error in Parliament from the Exchequer Chamber.

Yet after such Reversal or Affirmance, the Party who apprehends himself grieved may have a Writ of Error returnable in Parliament.

When Suit by original Error lies on in Parliament.

Where the Suit is by Original a Writ of Error lies in Parliament only, and not elsewhere, as not being first commenced in the Court of *King's Bench*, but in another Court, viz. the Court of *Chancery*.

Bail can't have Error in Exchequer Chamber.

Bail cannot have a Writ of Error in the *Exchequer Chamber* by the Statute 27 *Elizabeth* c. 8. V. *Cro. Car.* 300.

Error lies not in the Exchequer Chamber on a Judgment upon a Sci. Fa.

Error does not lie in the *Exchequer Chamber* upon a Judgment upon a *Scire Facias* only in the *King's Bench*, because it is *Casus Omissus* out of the Statute 27 *Elizabeth* which gave Writs of Error returnable in the *Exchequer Chamber* upon Judgment recovered in the *King's Bench* by Bill.

No Error in Exchequer Chamber in Qui tam,

In an Action *Qui tam* upon a Statute where the King is to have a Part, Error lies only in Parliament.

Scand. Mag.

on *Sci. Fa.* against Bail after two Nihilis returned. No

No Writ of Error to reverse a Judgment in an Action *Qui tam*, &c. lies in the *Exchequer* Chamber, because the King is Party; so also upon the *Stat. de Scandalis Magnarum*. 1 Cro. Lord Say's Case. 1 Ventris 49. Where a *Sci. Fa.* goes against the Bail in this Court, and two *Nihils* are returned, and Judgment is had thereupon, no Writ of Error can be brought in the *Exchequer* Chamber, but in the Parliament only. Ventris 38, 168.

Also after such a Return it cannot be assigned for Error, that there was no *Capias* returned against the Principal, but in that Case the Bail is relievable only by *Audita Querela*; but if the Sheriff returned a *Scire Faci*, they might plead it. Fitz. N. B. 104. Ventris 38.

The Court of *Exchequer* Chamber hath nothing to do with Errors in Fact, for the Court of King's Bench had Power to examine Matters in Fact in their own Judgments before the Statute; and the Statute extends only to such Cases as had no other Remedy but in Parliament. 2 Lev. 38.

Judgment *pro Def.* on Demurrer reversed in *Exchequer* Chamber, and Judgment *Quod Recuperet*, &c. But because they wanted Power to award a Writ of Inquiry, it was sent into *B. R.* for the Execution of that Writ, and thereupon to give final Judgment. Carth. 181.

If on a Demurrer Judgment be given for the Defendant, and reversed on Error in the *Exchequer* Chamber, that Court cannot award

After such
return Bail
relievable only
by Audita
Querela.

Error in Fact
not to be cor-
rected in Ex-
chequer
Chamber.

Exchequer
Chamber can't
award a Writ
of Inquiry.

award a Writ of Inquiry, but only *Quod Quer. recuperare Debeat*, and then the Proceedings must be in *B. R. Comb. 314. V. Carth. 180, 181, 319.*

May besides Reversal give complete Judgment.

Judgment *pro Def.* in *B. R.* *sur* special Verdict, Judgment reversed in *Exchequer Chamber*, that Court doth besides the Judgment of Reversal, give a complete Judgment *pro Quer. viz. Quod recuperet. Carth. 319.*

Of Execution in Abatement in Exchequer Chamber.

Error port *per 6.* in *Exchequer Chamber*; *die*, a *Remittitur* should be entered to warrant Execution in *B. R.* against the Survivors. *Carth. 236.*

Where Writ of Error abates in Exchequer Chamber, Judgment is not in B. R. without a Remittitur.

Where a Writ of Error determines in the *Exchequer Chamber* by Abatement or Discontinuance, the Judgment is not again in the *King's Bench*, till there be a *Remittitur* entered, for without such *Remittitur*, it cannot appear to the Court of *King's Bench* but that the Writ of Error is still pending in *Camera Scaccarii.*

Debt on a Judgment pending Error in Exchequer Chamber.

In *Trespas* for 300 *l.* Damages were recovered, and Judgment therein, and Error brought thereof in the *Exchequer Chamber* pending which the Plaintiff brought an Action of Debt in this Court for the 300 *l.* and by all the Judges except *Kelynge* it was lies, for the Record itself is yet in the Court, and the Writ of Error is a *Superfedeas* only. *1 Lev. 153.*

A Judgment in Debt is had in the *King's Bench*, and a Writ of Error is brought, still remains a Record of the *King's Bench* and an Action of Debt may be brought upon the Judgment. *1 Ventris 34*

Err

Error tam in redditione Judicii quam in adjudicatione Executionis.

BAIL may bring a Writ of Error *tam Where Bail in redditione Judicii quam in adjudicatione Executionis* upon a Judgment recovered against them by *Scire facias*.

On a Judgment for the Plaintiff in the *King's Bench*, affirmed in the *Exchequer Chamber*, and an Award of Execution in *Scaccarii* on an Award of Execution after Judgment in the *Exchequer Chamber tam in redditione Judicii quam in adjudicatione Executionis* (aliter if there had been no Writ of Error before on the original Judgment) for the Merits of the first Judgment have been examined, and such second Writ is no *Supersedeas*, and Execution sued out will be no Contempt. See *Salk. 263.*

Writ of Error brought by Bail on a Judgment against him by *Scire facias* in an inferior court, and it was *tam in redditione Judicii quam in adjudicatione Executionis* against the Principal, *Writ of Error* against the Bail; but it was washed against the Principal, and the Bail proceeded to reverse the Judgment against him.

Error coram nobis residen'.

If a Judgment
in this Court
be erroneous in
Matter of
Fact, Writ of
Error lies in
this Court to
reverse it, but
not if erroneous
in Matter of
Law.

IF a Judgment given in this Court be erroneous in Matter of Fact only, and not in Matter of Law, a Writ of Error *cor. nobis residen.* may be brought in this Court, where the Judgment was given to reverse it; but if the Judgment be erroneous in Matter of Law, then a Writ of Error cannot be brought in this Court to reverse it. Error in Fact, is not the Error of the Judges, and therefore the reversing of a Judgment given by them, which is only erroneous in Matter of Fact, is not reversing their own Judgment; but it is otherwise if the Judgment were erroneous in Matter of Law, for they cannot be thought to reverse their own Judgments.

Error cor. nobis residen.
lies not in the

Error *coram nobis residen.* lies not in the Exchequer Chamber.

Of allowing it,
and whether a
Superse-
deas without
Leave of the
Court.

This Writ is allowed in Court by the Secondary, and because none of the Statutes which oblige the Plaintiff in Error to put in Bail, extend to this Writ of Error, it is said to be no *Supersedeas* but by Leave of the Court.

But a modern Reporter in a Case of Error against *Collins*, *Trin.* 9 Geo. 1. seems to say, that a Writ of Error *coram nobis residen.* may be allowed by the Secondary Vacation, and that it is a good *Supersedeas* from the Allowance even without Notice.

The Way to compel the Plaintiff to assign Errors, is by Motion in Court, and he must assign Errors immediately on Service of the Rule. Errors to be assigned on Motion.

On Errors in Fact assigned, if found for the Plaintiff on Trial, he must move to put the Cause in the Paper for Argument, and then upon producing the *Postea*, the Court will give Judgment of Reversal. How Judgment reversed on Error in Fact.

Error in Fact assigned in a Judgment in Dower, viz. that the Tenant was an Idiot, and appeared by Attorney, Issue being taken on the Ideocy, the Plaintiff gave Notice of Trial next Assizes, and after countermanded it, nevertheless the Defendant in Error carried it down to Trial the same Assizes without a Proviso, and held good *per Cur.* for he was an Actor in the first Suit, and is the Party delayed by this Means; and the Issue was found for the Defendant in Error, and the Judgment affirmed, and a Precedent was cited, wherein it was so done in a Writ of Error out of Ireland. 2 Lev. 5. On Error in Fact Defendant may carry the Cause to Trial without Proviso.

Trespas, Verdict and Judgment against five Defendants in C. B. but one of the Defendants died before the Verdict. Error port for the four surviving Defendants; but the Writ being ill, because it did not set forth that the fifth Defendant was dead, the Plaintiffs in Error prayed a new Writ of Error *cor. ubi residen.* the Plaintiffs on another Day moved for a *Supersedeas*, because the Writ was not a *Supersedeas* of itself, as the first Writ of Error was; and a *Supersedeas* was granted, Judgment reversed for Death of one of the Defendants before Verdict.

Though two Writs of Error quashed, a third granted, and also a Superseas.

and the Plaintiffs put in Bail thereon; Error assigned that one of the five Defendants died before Verdict; Issue and Verdict thereon; but Exception being taken to this Writ of Error, it was also quashed. Motion for a new Writ of Error *cor. vobis residen.* and a *Superseas*, which was granted on putting in Bail; but the *Superseas* was opposed as being the third Writ of Error; *sed per Cur.* this is the first Writ of Error *coram nobis residen.* for the other was void. Verdict for Plaintiffs in Error on the above Issue. Judgment reversed. *Carth.* 367.

Error from Ireland.

Plaintiff to assign Errors on Motion.

THE Method of compelling the Plaintiff in the Writ to assign Errors, is by Motion in Court, and he will be ordered to assign Errors within a Week after Service of the Rule: And if the Plaintiff, his Attorney or Agent, cannot be found, the Court will order that sticking up the Rule in the Publick Office, shall be good Service on the Plaintiff in Error.

By like Rule Defendant to join.

And the Plaintiff in Error must move the Court for a Rule for the Defendant to join in Errors, and he has four Days to do it after Service of the Rule.

Must be an Affidavit verifying Errors assigned.

On an Assignment of Errors from *Ireland* there must be an Affidavit annexed verifying the same.

in the Court of King's Bench. 453

If the Judgment is affirmed, the Record *If Judgment*
is transmitted to Ireland, and the Court *affirmed, Exe-*
there awards Execution. *cution must be*
awarded in
Ireland.

No *Scire facias ad audiendum Errores* lies *No Sci. Fa.*
here upon a Writ of Error on a Judgment in *ad audiend.*
Ireland, but a Rule of Court to assign Er- *Error.*
rors. Butler against Zanchy, Hil. 21, 22
Car. 2. Vide 2 Keb. 590.

When the Transcript is brought over *Of bringing in*
from Ireland, it is to be lodged with Mr. *and copying the*
Hawley the Signer of the Writs, from whom *Transcript.*
first the Plaintiff in Error, and then the
Defendant in Error takes it out and co-
pies it.

If the Plaintiff in Error does not bring *Of obtaining*
the Transcript, and thereby delays the *Execution for*
Defendant of his Execution, the Defend- *Default of*
ant must obtain a Certificate from Mr. *transcribing.*
Hawley, with whom the Transcript ought
to be lodged, that the Transcript is not
brought in, whereupon the Curſitor will
make out a Writ *de Executione Judicii* di-
rected to the Chief Justice in Ireland.

If the Judgment be affirmed with Costs, *Of Execution*
no Execution can be had here, an original *on affirming*
execution cannot issue into a foreign Coun- *the Judgment.*
ty, and this Court cannot issue an Execu-
tion into the County (in Ireland) where
the Action was brought in order to ground
Testatum. Carth. 460.

Ejectment in B. R. in Ireland; *Judic. pro* *Of reversing a*
Error in B. R. in England, and Judg- *Judgment gi-*
ment reversed, and Judgment given *quod ven for the De-*
Quer. *land.*

Quer. recuperet Terminum, &c. And resolved that there should be a Writ directed to the Chief Justice in *Ireland* to reverse that Judgment, and commanding to award Execution *Cro. Car.* 368.

Error in Parliament.

How a Writ of Error in Parliament is made returnable.

A Writ of Error that is brought in the Parliament, is made returnable immediately, or upon a Prorogation *ad proxi- mum Parliamentum*, because that Court, during the Session of it, sits continually, and has no Vacation; and it is for the Honour of that High Court to be immediately attended, that they may do the speedier Justice; the Proceedings there are very expeditious, there being no *Scire facias*; but upon a Motion made in the House by one of the Peers, a Day is appointed for the Plaintiff in Error to assign his Errors, and after Issue is joined on *In nullo est Erratum* upon another Motion made in Manner aforesaid, their Lordships appoint a Day for the Hearing of the Errors; at which Day both Parties must attend with their Counsel; but neither Party must have more than two Counsel to plead for him.

Error lies not from the Court of Exchequer to the House of Lords.

Error lies not from the Court of Exchequer *quer* to the House of Lords, for the Exchequer Chamber interposes. *Salk.* 511.

Action in the Court of King's Bench by ^{Where Judgment reversed in Parliament, they give the same Judgment as B.R. ought to have done.} Original, Judgment for the Defendant, and Error brought in Parliament; if the Parliament reverse the Judgment, they will give the same Judgment as the Court of King's Bench ought to have done. *Carth.* 180, 319.

Forasmuch as upon Writs of Error returnable in this High Court of Parliament, the Plaintiffs therein often desire to delay Justice, rather than to come to the Determination of the Right of the Cause; It is therefore ordered by the Lords Spiritual and Temporal in Parliament assembled, That the Plaintiffs in all such Writs, after the same and the Records be brought in, shall speedily repair to the Clerk of the Parliaments, and prosecute the Writs of Error, and satisfy the Officers of this House their Fees justly due unto them, by reason of the Prosecution of the said Writs of Error, and the Proceedings thereupon, and further shall assign their Errors within eight Days after the bringing in of such Writs with the Records; and if the Plaintiffs make Default so to do, then the said Clerk, if the Defendant in such Writs require it, shall record that the Plaintiff hath not prosecuted his Writ of Error; and that the House doth therefore award that such Plaintiff shall lose his Writ, and that the Defendant shall go without Day, and that the Record be remitted; and if any Plaintiff in any

Proceedings on Writs of Error in Parliament.

Errors to be assigned in eight Days, or Non Profs and Remittitur.

If Diminution alleged and Certiorari prayed.

Certiorari to go without Motion, and be returned in ten Days.

Or lose Benefit thereof, and Defendant to proceed as if none awarded.

Printed Cases to be signed.

any Writ of Error shall alledge Diminution, and pray a *Certiorari*, the Clerk shall enter an Award thereof accordingly ; and the Plaintiff may, before *In nullo est Erratum* pleaded, sue forth the Writ of *Certiorari* in ordinary Course, without special Petition or Motion to this House for the same ; and if he shall not prosecute such Writ, and procure it to be returned within ten Days next after his Plea of Diminution put into this House, then unless he shall shew some good Cause to this House for the enlarging of the Time for the Return of such Writ, he shall lose the Benefit of the same ; and the Defendant in the Writ of Error may proceed as if no such Writ of *Certiorari* were awarded. *Ordo Dom. Procer. Die Veneris 13 Dec. 1661.*

The House taking Notice, That upon Appeals and Writs of Error, there have been of late several scandalous and frivolous printed Cases delivered to the Lords of this House : For preventing whereof for the future, it is this Day ordered by the Lords Spiritual and Temporal in Parliament assembled, that no Person whatsoever do presume to deliver any printed Case or Cases to any Lord of this House, unless such Case or Cases shall be signed by One or more of the Counsel who attended at the Hearing of the Cause in the Courts below, or shall be of Counsel at the Hearing in this House :

House: And this Order to be added to the Roll of Standing Orders, and affixed on the Doors of this House, and the Courts in Westminster-Hall. *Ordo Dom. Procer. Die Martis 19 Aprilis 1698.*

Upon Consideration of the great Incon-
 veniencies arising by Motions and Petitions
 for putting off Causes, after Days have
 been appointed for hearing thereof, it is
 ordered by the Lords Spiritual and Tem-
 poral in Parliament assembled, that when a
 Day shall be appointed for the Hearing any
 Cause, Appeal, or Writ of Error, argued
 in this House, the same shall not be altered
 but upon Petition; and that no Petition
 shall in such Case be received, unless two
 Days Notice thereof be given to the adverse
 Party, of which Notice Oath shall be made
 at the Bar of this House: And it is further
 ordered, that this Order be added to the
 Roll of Standing Orders. *Ordo Dom. Procer.*
Die Mercur. 22 Dec. 1703.

Ordered, that in all Cases upon Writs of
 Error depending in this House, when Di-
 minution shall be at any time alledged, and
 Certiorari prayed and awarded before In-
 quillo est Erratum pleaded, the Clerk of the
 Parliaments shall, upon Request to him
 made, give a Certificate that Diminution
 is so alledged, and a Certiorari prayed and
 awarded thereupon: And it is further or-
 dered,

*No putting off
 a Day of
 Hearing,
 without No-
 tice of Two
 Days, and
 Oath thereof.*

*Certificates to
 be given of
 Certiorari's
 being awarded
 concerning
 Writs of Error.*

dered; that this Order be entered on the Roll of the Standing Orders of this House.
Ordo Dom. Procer. Die Veneris 21 Feb. 1717.

*How Counsel
 are to proceed
 at hearing
 Causes.*

Upon Report from the Committee of the whole House, appointed to take into Consideration Matters relating to the Proceedings on Appeals and Writs of Error: It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that at the Hearing of Causes for the future, one of the Counsel for the Appellants shall open the Cause, then the Evidence on their Side shall be read; which done, the other Counsel for the Appellants may make Observations on the Evidence: Then one of the Counsel for the Respondents shall be heard, and the Evidence on their Side to be read; after which the other Counsel for the Respondents shall be heard, and one Counsel only for the Appellants to reply. *Ord. Dom. Procer. Die Sabbat. 2 Mart. 1727.*

*Writ of Error
 discontinued by
 Prorogation, a
 second Writ no
 Superfedeas.*

A Writ of Error returnable in Parliament, discontinued by the Prorogation of the Parliament: Another Writ brought. *Teste* the last Day of the Session, viz. 1 March, returnable 19 November, the Day to which it was prorogued. The Court resolved, that though the first Writ was not discontinued by any Act of the Party, yet this second should be no *Superfedeas*—That a Writ of Error returnable *ad proximum Parliamentum* could not be good; but here

here the Parliament was prorogued to a Day certain that in regard of the Length of Time in the Return it should be no *Superfedeas*. 1 *Ventris* 31. If *ret.* ad prox. Parliament' no *Superfedeas*.

If a Writ of Error be brought in the *Exchequer* Chamber, and that being discontinued, another is brought in Parliament, this second Writ is a *Superfedeas*. But if a Writ of Error be brought in Parliament, and that abates, and the Plaintiff brings a second, this is no *Superfedeas*, because it is in the same Court. 1 *Ventris* 100. When a second Writ of Error a *Superfedeas* and when a *not*.

A Writ of Error Teste 30 Nov. ult. returnable in Parliament 13 April next, the Day to which the Parliament was prorogued. *Hale*, The Lords have lately declared, that a Prorogation does not determine a Cause depending in Parliament by Writ of Error; but that comes not to this Case, the Writ not being returned. A Writ of Error returnable *ad proximum Parliamentum* is not good; but otherwise, if they are summoned or prorogued to a Day certain.

A Writ of Error bore Teste 10 Nov. and returnable 1 Nov. prox. futur. and the Record was sent into the *Exchequer* Chamber, a *Mittimus* indorsed upon the Roll here; and it was resolved Execution might be taken out because of the long Return. 2dly, That though there were a *Mittimus* upon the Roll, yet the Record remained here until the Return of the Writ to all Purposes. Writ of Error with a long Return no *Superfedeas*.

The Opinion of the Court, the Writ of Error was no *Superfedeas*, but would make

no Rule, because not judicially before them; but Party must take out Execution if he thought fit, and then, if the other Side moved for a *Supersedeas*, would resolve the Point. 1 *Ventris* 266. 2 *Lev.* 120.

Error not determined by Prorogation.

Upon Error in Parliament of Judgment affirmed in B. R. new Bail required.

A Writ of Error does not determine by a Prorogation of the Parliament. 2 *Lev.* 93.

If on a Judgment in the *Common Pleas*, a Writ of Error brought in this Court, Bail put in according to the Statute, and Judgment affirmed, a Writ of Error be brought in Parliament, the Party must give a new Recognizance, for the first Recognizance does not include Payment of Costs to be assessed in the House of Lords. *Salk.* 97.

Sci. Fa. Quare Executionem non in Debt, on Judgment, removed out of the Court of Common Pleas by Writ of Error into the King's Bench.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of *Middlesex*, Greeting: Whereas Marmaduke A. lately in our Court, before Sir Edward N. Knight, Sir J. P. Knight, and Sir John P. Knight, our Justices of the Bench at *Westminster*, by our Writ, and by the Judgment of the same Court, recovered against Michael A. of the Parish of Saint Paul Covent Garden in the County of *Middlesex*, Gentleman, two hundred Pounds of Debt, and sixty Shillings for his Damages, which he had sustained as well by occasion of the detaining of that Debt, as for his Costs and Charges by him about his Suit in that Behalf expended; whereof the said Michael was convicted, as by the Inspection of the Record and Proceedings thereon, which

which we lately caused to come in our Court before us, for certain Causes concerning Error, appears to us from Record: And now on Behalf of the said *Marmaduke* in our said Court before us, we have been informed, that although the said Judgment be given in Form aforesaid, yet Execution for the said Debt and Damages still remains to be made to him; whereupon the said *Marmaduke* hath prayed us, that a proper Remedy may be provided for him in this Case: And we, being willing that what is just should be done on this Occasion, command you, that by good and lawful Men of your Bailiwick, you make known to the said *Michael* that he be before us, from the Day of _____ wheresoever we shall then be in *England*, to shew if any thing he has or knows to say for himself, why the said *Marmaduke* ought not to have his Execution against him for the said Debt and Damages, according to the Force, Form and Effect of the said Recovery, if we shall think it expedient, &c. and further to do and receive what our said Court before us shall then and there consider of him on this Behalf; And have you there the Names of those by whom you shall make known to him, and this Writ. Witness,

GEORGE the Second, by the Grace Another on a Judgment in an inferior Court. of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Mayor and Bailiffs of the Town of *Northampton*

Northampton, Greeting : Whereas *Peter L.* lately in our Court of the Town aforesaid, before you without our Writ, and by the Judgment of the same Court, recovered against *Francis S.* Esquire thirty-seven Pounds six Shillings and nine Pence, for his Damages which he sustained as well by occasion of the not performing certain Promises and Undertakings lately made to the said *Peter L.* by the said *Francis S.* as for his Costs and Charges by him about his Suit in that Behalf expended, whereof the said *Francis S.* was convicted, as by Inspection of the Record and Proceedings thereupon, which we have lately caused to come in our Court before us, for certain Causes concerning Error, appears to us of Record : And now on the Behalf of the said *Peter L.* in our said Court before us, we have been informed, that although the said Judgment was given in Form aforesaid, yet Execution for the said Damages still remains to be made to him ; whereupon the said *Peter L.* hath humbly intreated us for a proper Remedy to be provided for him in this Behalf : And we, being willing that what is just should be done in this Behalf, command you, that by good and lawful Men of the Bailiwick of the Town aforesaid you make known to the said *Francis S.* that he be before us from the Day of _____ wheresoever, &c. to shew if any thing he has or knows to say for himself, why the said *Peter L.* ought not to have his Execution against him for the said Damages, according to the Force, Form

and

and Effect of the said Recovery, if he shall think it expedient, &c. and further to do and receive what our said Court before us shall then and there consider of him in this Behalf; And that you have there the Names of those by whom you shall make known to him, and this Writ. Witness, &c.

And afterwards, to wit, on *Wednesday* next after three Weeks, from the Day of the Holy Trinity in this same Term, before our Lord the King at *Westminster* the said *George Davery* comes in his proper Person, and says, that Execution of the said Judgment still remains to be made to him; therefore he prays the Writ of our Lord the King to be directed to the Sheriff of the said County of *Surrey*, to warn the said *Elizabeth* to be before our Lord the King, wheresoever, &c. to shew if any thing she has or knows to say for herself, why the said *George* ought not to have his Execution thereof against her, as well of the Possession of his said Term yet to come of and in the said Tenements, with the Appurtenances, as of his Damages, Costs and Charges, according to the Force, Form and Effect of the said Recovery; and it is granted to him, &c. By which it is commanded to the Sheriff of the County of *Surrey*, that by good and lawful Men of his Bailiwick he make known to the said *Elizabeth*, that she be before our Lord the King from the Day of Saint *Michael* in three Weeks, wheresoever, &c. to shew in Form afore-

Non-Pros
after two Sci.
Fa's in Error
on Ejectment.

First Sci. Fa.

aforeſaid : If, &c. And further, &c.
 The ſame Day is given to the ſaid George,
 &c. At which Day before our Lord the
 King at *Weſtminſter*, the ſaid George comes
 in his proper Perſon : And the Sheriff of the
 ſaid County of *Surrey*, to wit, *A. B.* Eſq.
 returns that the ſaid *Elizabeth Arnold* has
 nothing in his Bailiwick by which he can
 make known to her, nor is ſhe found in the
 ſame, and ſhe does not come : Therefore
 as before, it is commanded to the Sheriff
 of *Surrey*, that by good, &c. he make
 known to the ſaid *Elizabeth*, that ſhe be
 before our Lord the King on the *Oſtave* of
Saint Martin, whereſoever, &c. to ſhew in
 Form aforeſaid, if, &c. And further, &c.
 The ſame Day is given to the ſaid George,
 &c. At which Day before our Lord the King
 at *Weſtminſter*, the ſaid George comes in his
 proper Perſon : And the Sheriff of the ſaid
 County of *Surrey*, to wit, the ſaid *A. B.* Eſq.
 likewise returns, that the ſaid *Elizabeth* has
 nothing in his Bailiwick by which he can
 make known to her, nor is ſhe found in
 the ſame ; and the ſaid *Elizabeth*, although
 on the fourth Day of the Plea ſolemnly re-
 quired, came not, but made Default ; and
 upon this the ſaid George ſays, that the ſaid
Elizabeth hath not yet assigned Error or
 Errors in the ſaid Record and Proceedings.
 Therefore a Day is given to the ſaid Par-
 ties before our Lord the King at *Weſtmin-
 ſter* until *Wednesday* next after fifteen Days
 from the Day of *Saint Martin*, to wit, to

Returned Ni-
hil.

Alias Sci. Fa.

Nihil return-
ed.

Day appointed
to assign Er-
rors.

the said *Elizabeth* to assign Error or Errors
in the said Record and Proceedings, &c.
At which Day before our Lord the King *Plaintiff in*
at *Westminster*, the said *George* comes in *Error makes*
his proper Person, and the said *Elizabeth* *Defaults.*
at that Day solemnly demanded came
not, but likewise made Default; nor has
he further prosecuted the said Writ of
Error against the said *George*: It is there-
fore considered, that the said *Elizabeth* be *Judgment.*
in Mercy, and that the said *George* have
therefore his Execution against the said *Eli-*
zabeth, as well of the Possession of his said
Term yet to come of and in the said Te-
ments with the Appurtenances, as of his
said Damages, Costs and Charges, accord-
ing to the Force, Form and Effect of the
said Recovery, &c. And it is further *Costs*
considered, that the said *George* recover
against the said *Elizabeth* five Pounds and
ten Shillings adjudged to the said *George*
by the Court of our Lord the King now
here, according to the Form of the Sta-
tute, for his Damages, Costs and Char-
ges, which he sustained by occasion of
the delaying the Execution of the said
Judgment, by Pretence of prosecuting the
said Writ of Error; and that the said
George likewise have thereupon Execution,
&c.

Vide postea more Precedents.

Audita Querela.

*In what Case
an Audita
Querela lies.*

AN *Audita Querela* is a new kind of Action, and commenced only by Writ. 3. it doth not lie where there is any other Remedy at Law for the Plaintiff, either by Plea or otherwise. 1 *Raymond* 89. 1 *Just.* 290. b.

Any Person bound by Statute or Recognition, or against whom a Judgment is given, that hath a Release, or other Matter in Writing, or any Matter in Fact whereby he ought to be discharged and released, but hath no Day in Court to plead the same, shall have this Writ, which issues out of the *Chancery*, directed to the Judges of this Court, or of the *Common Pleas*; and is in the Nature of a Commission to the Judges to call the Parties before them, hear the Complaint, and to do Right.

*If in Debt on a
Judgment,
Judgment be
obtained, and
the first Judg-
ment be after-
wards reversed
on Writ of
Error, Audita
Querela lies.*

If on a Judgment in this Court, and Writ of Error brought thereon in the *Exchequer Chamber*, the Plaintiff in the Original Action brings Debt on the Judgment and recovers a Judgment thereupon, and afterwards the first Judgment is reversed on the Writ of Error, an *Audita Querela* may be brought for Relief against this Second Judgment.

*It lies for Bail
after the Re-
versal of the
Judgment a-
gainst the Prin-
cipal.*

If after Judgment against the Bail the Judgment against the Principal be reversed or satisfied, the Bail may have an *Audita Querela*.

in the Court of King's Bench. 467

If an Action be brought against *A.* for a *Assault a-Trespas* committed by him *simul cum B.* ^{against two,} and Judgment be obtained thereupon, and ^{Plaintiff re-} afterwards the Plaintiff release *B.* an *Audita* ^{leases one, Au-} *Querela* lies for *A.* on this Release. ^{dit a Querela} ^{lies.}

If one be taken in Execution, and afterwards set at Liberty by the Plaintiff, and then taken again upon the same Execution, he may bring his *Audita Querela* to be enlarged; for the Execution was discharged, and being once discharged is discharged for ever, and supposes a Satisfaction. ^{It lies for one set at large on an Execution, and taken again.}

If at *Nisi Prius* in *Trespas* a Verdict be found for the Plaintiff, and Damages assessed, and before the Day in Bank the Plaintiff release to the Defendant all Actions and Demands, and afterwards prays Judgment, and sues Execution thereupon, the Defendant upon that Release shall have an *Audita Querela*. ^{It lies upon a Release after Verdict, and before Day in Bank.}

An *Audita Querela* lies not after Judgment upon a Matter which might have been pleaded before; but where the Party was condemned, and had no Day in Court to lead it, an *Audita Querela* lies. ^{Where an Audita Querela lies not.}

Where a Defendant had Matter which might have been pleaded to a *Scire Facias*, and has lost the Benefit of that by an Award of Execution upon a *Scire Feci* returned, he is estopped for ever, and can never have an Opportunity or Means to let himself in to take Advantage of that Matter; where it is an Award on two *Nibils* returned, he may relieve himself by *Audita Querela*; *Nibils*. ^{After Award of Execution on a Sci. Fa. and Sci. Feci returned, Defendant cannot have Advantage of Matter pleadable to that; otherwise.}

Querela; and the Court will save him that Trouble, and relieve him, upon Motion, unless the Ground of his *Audita Querela* be a Release, or some such Matter of Fact as may be proper to be tried.

No Audita *Querela* to be allowed but in open Court. No Writ of *Audita Querela* for any Cause whatever shall be allowed but in open Court and on Motion. *Trin. 9 Jac. 1.*

Audita Querela is no *Superfedeas*. An *Audita Querela* is no *Superfedeas*, and therefore Execution may be taken out, unless a *Superfedeas* be sued forth; and if the *Audita Querela* be founded on a Deed, it must be proved in Court before a *Superfedeas* shall be granted.

Process in Audita *Querela*. If an *Audita Querela* be founded upon Record, or the Party be in Custody, the Process upon it is a *Scire Facias*; but if be grounded on a Matter of Fact, or the Party be not in Custody, and only brought *Quia timet*, the Process is a *Venire* and Distress infinite.

Bail on Audita *Querela*. One in Execution may be bailed on *Audita Querela*, but must procure four Persons to become Bail for him.

No Bail taken on Audita *Querela* but in Court, and on Motion. Bail shall not be taken on an *Audita Querela* but in open Court, and by Special Motion. *Trin. 9 Jac. 1.*

The Form of the Bail-piece on an *Audita Querela* *The Form of the Bail piece*

Hilary Term in the Twelfth Year of King George the Second.

Marth. (to wit.) J. L. of, &c. is Delivered on Bail to Prosecute with Effect a Writ of Audita Querela brought by him to be discharged of and from a Judgment given against him in the Court of our Lord the King, before the King himself, at the Suit of one J. W. for Five hundred Pounds of Debt, and for Damages, Costs and Charges to

J. D. of, &c. Gent.
F. J. of, &c. Gent.
J. B. Attorney. G. H. of, &c. Gent.
and
J. K. of, &c. Gent.

You severally acknowledge yourselves to *The Condition*
we J. W. the Sum of One thousand *of the Recogni-*
pounds, zance.

Upon Condition that the said J. L. shall
prosecute his Suit with Effect, and if he
H h 3 shall

shall be convicted, or make Default in the Premises, that he shall pay the Condemnation Money, or you shall do it for him.

Are you Content ?

I apprehend that the Plaintiff in the *Audita Querela* cannot be surrendered in Discharge of his Bail, though the contrary appears by several Entries I have seen.

*Entry of the
Surmise and
Recognizance
on a Writ of
Audita Que-
rela.*

*Defendant
brought in
Custody to the
Bar of the
Court.*

*Surmises that
he rendered
himself in
Execution.*

Our Lord the King sent to his Justices, assigned to hold Pleas before the King himself, his Writ close, in these Words, *to wit*, George the Second, &c. (and so recite the whole Writ of *Audita Querela*.)

Afterwards, *to wit*, on the _____ Day of _____ in that same Term before our Lord the King at *Westminster* the said *T. S.* comes in his proper Person, being brought to the Bar here, under the Custody of

Esq; Marshal of the *Marshalsea* of our Lord the King, and says, that he ought not to be farther detained in the said Prison by Pretence of the said Execution, because he says, that after the said Judgment was given against him the said *T. S.* at the Suit of the said *T. H.* for the Debt and Damages aforesaid, he the said *T. S.* (on such a Day) in the _____ Year of the Reign of our said Sovereign Lord George the Second, now King of *Great Britain*, &c. in the Court of our said Lord the King, before the King himself, the said Court being then at *Westminster* in the County of *Middlesex*, rendered himself to the Prison of the Marshal of the *Marshalsea* of our said Lord the King
for

for the said Debt and Damages; and he
the said *T. S.* then and there present in the *And was com-*
said Court, was by the said Court of our *mitted to the*
said Lord the King committed to the Cu- *Custody of the*
stody of *then Marshal of the* *Marshal.*

Marshalsea of our said Lord the King, be-
fore the King himself, in Execution for the
said Debt and Damages, there to remain
until the said *T. H.* should be fully satisfied
of the Debt and Damages aforesaid: And *Voluntary E-*
afterwards, *to wit,* on the *Day of* *escape by the*
then next ensuing, the said *Marshal.*

[the Marshal] permitted him the
said *T. S.* being in Prison in Execution for
the said Debt and Damages as aforesaid, to
escape out of the said Prison, and to go at
large; whereby the said *T. S.* was dischar-
ged from the said Execution; and the said
T. S. being discharged from the said Execu-
tion in Form aforesaid, the said *T. H.* after-
wards, *to wit,* on the *Day of*

in the Year aforesaid, at *B.*
in the County aforesaid, caused him the
said *T. S.* to be taken by Pretence of the
said Judgment, and to be committed to the
Custody of the Marshal of the *Marshalsea*
of our said Lord the King, in Execution
for the said Debt and Damages; and the
said *T. S.* prays that he may be discharged
from the said Prison, and of the said
Debt and Damages, &c. But because it
is unknown to our Court before us, whe-
ther the Allegation of the said *T. S.* be
true or no, it is commanded to the Sheriff *Sci. Fa. a-*
of *Middlesex*, that by good and lawful Men, *warded.*

*Delivered on
Bail.*

Et c. he make known to the said *T. H.* that he be before our Lord the King from the Day of *Easter* in fifteen Days, whereforever he shall then be in *England*, to shew, if any thing he has or knows to say for himself, why the said *T. S.* ought not to be discharged and delivered from the said Prison, and of the said Debt and Damages, Et c. and further to do and receive what, Et c. The same Day is given to the said *T. S.* Et c. And upon this came *E.* and *B.* Bail in their proper Persons and became Bail for the said *T. S.* to have his Body before our Lord the King at the same Time, Et c. and so from Day to Day, until, Et c. each of the said Bails under the Penalty of 104 *l.* which said Sums the said Bail acknowledged, and each of them by himself acknowledged to be made of their and each of their Lands and Chattels, and to be levied to the Use of the said *T. H.* if it should happen that the said *T. S.* should not personally appear at the Premises at any Day appointed, or to be appointed for him by the Court of our Lord the King now here, or should not prosecute his said Writ with Effect; or if it happen that Judgment be given for the said *T. H.* against the said *T. S.* Et c. he do not render himself on that Occasion to the Prison of the Marshal of the *Marshalsea* of our said Lord the King, before the King himself, Et c. or do not pay the said one hundred and four Pounds to the said *T. H.* And be it known, that the Writ of our

Lo.

Lord the King in this same Term, before our said Lord the King at *Westminster*, is delivered of Record to the Under-sheriff of the County of *Middlesex* present here in Court, to be executed in Form of Law, &c. At which Day before our Lord the King at *Westminster*, the said *T. S.* came in his proper Person; and the Sheriff returned, *Return Sci.* that he had made known to the said *T. H.* *Fa.* by *J. D.* and *J. F.* good, &c. which said *T. H.* according to the Notice given him in his Behalf, on the fourth Day of the Plea, being solemnly demanded, also came in his proper Person, and thereupon prays a Day to imparle; and it is given to him, &c. And upon this a Day is given to the said Par- ties to be before our Lord the King, on the Morrow of the Holy *Trinity*, wheresoever, &c. to wit, to the said *T. H.* to imparle, and then to answer, &c. And upon this came, &c. and became Bail to have the Body of the said *T. S.* before our Lord the King on the said Morrow of the Holy *Trinity*, wheresoever, &c. and so from Day to Day, until, &c. each of the said Bail Body for Body, &c.

And upon this, before our Lord the King *Entry of the* at *Westminster* came *N. B. R. R. S. B.* and *Recognizance* *T.* in their proper Persons, and became *on an Audita Querela in* Bail to have the Body of the said *R. M.* *another Man-* before our Lord the King at the same *ner.* time, and so from Day to Day, until, &c. and that the said *R. M.* shall prosecute his said Writ of *Audita Querela* with Effect, each of the said Bail under the Penalty of the

the several Condemnations aforesaid: And further, if it happen that Judgment be thereupon given against the said *R. M.* then the said Manucaptors grant, and each of them for himself grants, that the said several Debts and Damages be made of their and each of their Lands and Chattels, and be levied to the Use of the said *R. H.* if it happen that the said *R. M.* does not satisfy him the said several Debts and Damages.

*Judgment on
an Audita
Querela af-
ter a Verdict on
a Trial at Bar.*

From which Day the said Jury between the said Parties on the Plea aforesaid, were thereupon respited between them before our Lord the King, until on the Morrow of the Holy *Trinity* then next ensuing, wheresoever, &c. for Default of the Jurors, &c. on which Morrow of the Holy *Trinity* before our Lord the King at *Westminster* came as well the said *J. C.* in his proper Person, as the said *T. S.* by his Attorney aforesaid; and the Jurors of the said Jury being demanded likewise came, who to say the Truth of and upon the Premises being chosen, tried and sworn, say upon their Oaths, that the said *E. P.* Esquire, late Sheriff of the County of *C.* permitted the said *J. C.* to escape and go at large out of the said Prison in Manner and Form as the said *J. C.* in his Discharge of the said Execution has alledged: Therefore it is considered, that the said *T.* be intirely barred from all Execution whatsoever by Pretence of the said Recovery; and that the said *J. C.* be discharged from the said Execution, &c.

It is therefore considered, that the said Plaintiff be discharged from the Execution of the said Debt and Damages, and be delivered out of the Prison, in which he is detained on that Account, &c. *Mich. 4 & Jac. 1. Rot. 117. Dyer 194.*

It is therefore considered, that the said Plaintiff have no further Execution against the said V. or against any of the Lands, Tenements, Goods or Chatels of the said V. by Pretence of the said Recognizance; and that the said G. be intirely barred from having any Execution thereupon by Pretence of the said Recognizance; and the said V. and all his Lands, Tenements, Goods and Chatels be intirely discharged from such Execution, &c.

No Damages or Costs can be given to a Plaintiff on an *Audita Querela*. See *Dyer* ^{No Costs or Damages.}

Whether the Plaintiff in an *Audita Querela*, if it be found for him, shall have Restitution, or no, there being no such thing mentioned in the Judgment. See *1 Sid. 74. rela.* ^{As to Restitution upon a Recovery in an Audita Querela.}

4 1 Keb. 245. pl. 4. 260. pl. 39.

If the Plaintiff in an *Audita Querela* be nonsuited, though he may have a new Writ *Audita Querela*, he shall have no *Super-* ^{If Plaintiff nonsuited, can have no new Super-} *Superfedeas* to stay Execution.

Where an *Audita Querela* is brought by a Person actually in Execution, or if at *Audita Querela*, and he founds his Writ upon some need of the other Party, in both these cases a *Scire Facias* is the Process.

But

But where it is brought by a Person at large, and upon a bare Suggestion of Matter of Fact, there the only Process is *Venire Facias*, and upon that a Distress is finite. *Carth. 303.*

Heir may maintain *Audita Querela* on a Judgment payed by his Ancestor.

Judgment for 500*l.* against the Ancestor who pays it, and dies, not having taken Release of Deed upon the Payment. Resolved, the Heir may maintain *Audita Querela* upon this Payment, though no Deed of Specialty. *Drake* against *Ward*, *Hil. 20, 2 Car. 2. 2 Keb. 455.*

Audita Querela on a Judgment recovered by an Administrator, the Administration being revoked.

Administrator recovers in Trover, counting of his own Possession; but before Execution Administration is revoked, and the Defendant brings *Audita Querela*; and is adjudged it lay, for though he bringing it of his own Possession need not name himself Administrator, yet the Damages recovered are Assets; so where Baron and Feme Executrix recover, the Feme dies before Execution, the Baron shall not have *Scire Facias*. *1 Cro. 208, 227, 464. Turner and Davis* Entered *Pas. 22 Car. 2. ro. 576. 1 Danv. 636. p. 19. 2 Saund. 148. 1 Mod. 62. 2 Keble 668.*

Audita Querela on a Judgment, Plea Null tiel Record, the Judgment not being entered, ordered that it should be entered by a certain Time, or not at all.

Battery against the two Defendants, Verdict at the Assizes for the Plaintiff, who afterwards the *Nisi Prius*, and before the Day in Bank in Consideration of 10*l.* executes a Release to *Baker* one of the Defendants; *Merydall* the other Defendant, to have Advantage of the Release after the Day in Bank, and before Judgment entered, sued out an *Audita Querela*, put in Bail, and declared of the Judgment entered; the Plaintiff

the original Action pleads *Nil tiel Record*; the Plaintiff in the *Audita Querela* moved, that the Plaintiff in the original Action might bring in the *Postea* and enter Judgment, or that *Meredyth* should do it for him.

Per Cur. Let the Plaintiff in the original Action enter his Judgment within such a Time as of the Day in Bank, or let it never be entered, and then let the Suit on the *Audita Querela* stay. *Ranfere* against *Meredyth* and *Baker*, *Pas.* 26 Car 2. § 1 Mod. III.

One in *Northumberland* lent Money, and Where the
for Security accepted a Judgment, the Mo- Court gave Re-
ney was paid within a Day or two after it lief without an
became due, and the Party gave an Ac- Audita Que-
quittance, and promised to acknowledge rela.
Satisfaction; and this was proved before the Secondary; yet the Plaintiff took the Defendant in Execution, and he remains in Prison. *Wild* and *Cur.* (*Twisden* absent) The proper Remedy is by *Audita Querela*; but let the Plaintiff appear here the next Term to shew Cause why he should not acknowledge Satisfaction on Record. *Anonymus*, *Mich.* 29 Car. 2.

The Plaintiff taken in Execution brings Scire Facias
Audita Querela, *Teste* 3 Nov. A *Scire Facias* *Teste* before
issues *Teste* 23 October. The Defendant ap- Audita Que-
pears and demurs, and moves for Cause, rela.
that the *Teste* of the *Scire Facias* is before the *Audita Querela*; *non Allocatur*; for here the *Scire Facias* being but to compel the Party to appear, and answer the *Audita Querela*, the Appearance has helped the Defect of the Process; but upon a *Scire Facias* upon a Judgment it may be other-
wise,

wife, because another Judgment is to be grounded upon it; and if such a *Scire Facias* be tested out of Term it is ill. *Vaughan against Lloyd, Hil. 20, 21 Car. 2.*

Wager of Law.

Where Defendant may wage his Law.

WHERE an Action of Debt is brought against one upon some simple Contract between the Parties without Deed of Record, there the Defendant may wage his Law by swearing in Court in the Presence of his Compurgators, that he owes not the Money, nor any Penny thereof, in Manner and Form as the Plaintiff hath declared.

Wager of Law lies not in Debt on a By-Law, nor any Action where a Wrong is supposed.

On Debt for the Penalty of a By-Law made by a Corporation, the Defendant shall not wage his Law, because it is founded on the Wrong of the Party, in not submitting to the Order of the Government of the Corporation, and arises from the Defendant's Contempt and Disobedience; and in such Cases no Wager ought to be allowed; nor in Debt for an Escape, for it supposes Wrong; so in Debt for Subtraction of Tithes; so it is in Debt on a *Devastavit*.

Wager lies in Account, if received of the Plaintiff, not of a Stranger.

No Wager lies but where the Debt arises from a simple Contract that is secret, and not where the Action is founded on any thing that is notorious. In account, if the Receipt was by the Hands of the Defendant, he may wage his Law, not if by the Hands of a third Person; but in Bailment

ment, though by the Hands of a third Person, the Defendant may wage his Law, because the Bailment is not traversable, but the Detainer and the Re-delivery may be private.

In Debt on an Arbitrament where the Submission is by Parol, the Defendant may wage his Law for the Submission may be secret. *In Debt sur Arbitrament.*

In Debt for an Amerciament in a Court Baron, the Defendant may wage his Law, because the Matter is of small Value, which concerns the Lord only, and transacted in *Pais*, which might be without his Knowledge; but in Debt on a Judgment in a Court-Baron, the Defendant cannot wage his Law, for the Judgment could not be but by Confession or Verdict. *In Debt for an Amerciament in a Court-Baron. But not on a Judgment in a Court-Baron.*

In Debt for Rent on a Lease Parol the Defendant cannot wage his Law, because his Occupation is notorious; and so it is Account against a Bailiff for the same reason. *Lies not in Debt for Rent.*

In Debt by a Gaoler against his Prisoner for Meat and Drink, the Defendant cannot wage his Law, because the Defendant is in gaol, and the Plaintiff cannot take Security from him for Repayment, for a Bond will be void, and he must be content with Promise. *Nov in Debt by a Gaoler for Meat and Drink.* Salk. 683, 684.

Suffex, to wit, *Thomas Delves* complains against *William Gunner*, being in the Custody of the Marshal of the *Marshalsea* of our Lord the King before the King himself, of a Plea, *Declaration against a Bailiff by the Hands of the Plaintiff.*

of any Parcel thereof, in Form as the said Thomas has above declared against him: And this he is ready to defend against him and his Suit, as the Court of our Lord the King here shall consider: Therefore it is considered, that the said William thereupon ^{Judgment} wage his Law with six Compurgators, ^{that the Defendant wage} Pledges of the Law John Den and Richard ^{his Law with} Fen, and come with his Law here on ^{six Compur-} Thursday next after three Weeks from the Day ^{gators.} of St. Michael: And it is told to the Attorney of the said William, that he have then there at the same Day the said William in his proper Person, to perfect his said Law.

Friday next after three Weeks from the Day of St. Michael, in the Year of, &c.

Delves } It is ordered, that a *Non Prof.*
against } be recorded on the Motion of
Gunner.

And the said D. E. [the Defendant] de- Nil debet per ends the Force and Injury, when, &c. and Legem. says, that he does not owe the said A. B. [the Plaintiff] the said hundred Pounds, or any Penny thereof, in Manner and Form as the said A. B. has above complained against him: And this he is ready to defend against the said A. B. and his Suit, in such Manner as the Court of our Lord the King here shall consider: It is there- ^{Judgment} fore considered, that the said D. E. wage ^{that the Defendant wage his} his Law with six Compurgators, and come ^{Law.} with

with his Law before the Lord the King at *Westminster*, on

next after

Pledges of the Law *John*

Doe and *Richard Roe*: And it is told to the Attorney of the said *D. E.* that he have before our Lord the King at the Day the said *D. E.* in his proper Person to perfect his Law thereupon, &c. The same Day is given to the said *A. B.* at the same Place: At which Day before our Lord the King at *Westminster* came as well the said *A. B.* by his Attorney afore said

Defendant perfects his Law. as the said *D. E.* in his proper Person and upon this the said *D. E.* perfects

Judgment thereupon.

his Law thereupon with six Compurgators as he has above waged it. It is therefore considered, that the said *A. B.* take nothing by his said Bill; but for his said Complaint be in Mercy, and that the said *D. E.* go thereupon without Day, &c.

When Plaintiff non-prosses.

If the Plaintiff be nonsuited, then after the Word (*Westminster*) say, the said *D. E.* came in his proper Person; and the said *A. B.* although at the same Day solemnly demanded, came not, nor did he further prosecute his said Bill against the said *D. E.* therefore, &c. Judgment and Costs, as usual in *Non-Prosses*.

Defendant perfects his Law instant.

If the Defendant wages his Law instantly then after the Judgment for the Defendant to wage his Law, say thus: And upon this the said *D. E.* prays that he may be admitted to wage his Law thereupon instantly; and he is admitted, &c. and upon this the said *D. E.* here in Court perfects

affected his Law thereupon, &c. It is therefore, &c.

When the Defendant wages his Law, the *The Method of waging Law.* Secondary must appoint a Day for him to

appear in Court to wage his Law; and if he appears, he must bring with him six Compurgators, who are to swear that they believe he swears true. The Secondary must have the Record in Court, and the Defendant must be set at the right Corner of the Bar, without the Bar; then the Secondary will ask him if he will wage his Law; if he answers, he will, then the Judges usually admonish him and his Compurgators, that they do not take a false Oath; if they persist, the Secondary speaks as follows:

Secondary. A. B. (the Defendant) you owe C. D. (the Plaintiff) 100*l.* (or as the Case is) Why do you not pay him?

Defendant. I owe him nothing.

Secondary. Did you not buy, &c. (as in the Declaration?)

Defendant. No.

Secondary. Will you take your Oath of it?

Defendant. I will.

If the Plaintiff does not appear on being called thrice by the Cryer, he becomes nonsuited, and the Defendant goes quit without taking his Oath; but if he appears, the Secondary bids the Cryer call the Plaintiff, and the Defendant lay his Right hand upon the Book, and say after him

The Oath.

thus: Hear, ye Justices, that I owe not C. D. (the Plaintiff) 100 l. nor any Penny thereof, in Manner and Form as he hath declared against me: So help me God, and the Contents of this Book.

And then his Compurgators standing behind him are called over, and each holds up his Right Hand, and then lay their Hands upon the Book and swear, that they believe that what the Defendant swore is true.

When the Plaintiff may be nonsuited.

If the Defendant wages his Law *instantly*, the Plaintiff cannot be nonsuited, but is forever barred; but if a Day is given, whether in the same Term or another, the Plaintiff is demandable, and may be nonsuited, and bring a new Action.

Of proceeding against Members of Parliament.

At what Time Action may be commenced against any intitled to Privilege of Parliament.

Any Person may commence and prosecute any Action or Suit in any of his Majesty's Courts of Record at *Westminster*, &c. against any Peer of this Realm, or Lord of Parliament, or against any of the Knights, Citizens and Burgeesses of the House of Commons for the Time being, or against their or any of their menial or other Servants, or any other Person intitled to the Privilege of Parliament, at any time from and immediately after the Dissolution or Prorogation of any Parliament until a new Parliament shall meet, or the same be re-assembled, and from and immediately after any

any Adjournment of both Houses of Parliament for 'above the Space of fourteen Days until both Houses shall meet and re-assemble; and the said respective Courts may, after such Dissolution, Prorogation, or Adjournment, proceed to give Judgment, &c. and award Execution thereupon. Stat. 12, 13 W. 3. c. 3. Stat. 11 Geo. 2. c. 24.

Provided that the Person of any of the Knights, Citizens and Burgesses of the House, or any other Person intitled to the Privilege of Parliament, is not subject to be arrested during the Time of Privilege: Nevertheless, if any Person having Cause of Action or Complaint against any Peer of this Realm, or Lord of Parliament, such Person after any Dissolution, Prorogation or Adjournment as aforesaid, or before any Sessions of Parliament, or Meeting of both Houses as aforesaid, may have such Process out of his Majesty's Courts of *King's Bench*, &c. against such Peer or Lord of Parliament, as he might have had against him out of Time of Privilege; and if any Person having Cause of Action against any of the said Knights, Citizens, or Burgesses, or any other Person intitled to Privilege of Parliament after any Dissolution, Prorogation, or Adjournment as aforesaid, or before any Sessions of Parliament, or Meeting of both Houses as aforesaid, such Person may prosecute such Knight, Citizens, or Burgess, or other Person intitled to the Privilege of

Their Persons not to be arrested.

In what Manner to proceed against a Peer.

Or Member of the House of Commons, &c.

Parliament in his Majesty's Courts of King's Bench, &c. by Summons and Distress infinite, or by original Bill and Summons, Attachment and Distress infinite, thereupon to be issued out of any of the said Courts of Record, which the said respective Courts are empowered to issue against them, or any of them, until he or they shall enter a common Appearance, or file common Bail to the Plaintiff's Action, according to the Course of each respective Court. *Stat. 12. 13 W. 3. c. 3.*

Suit stayed by Privilege not barred by Statute of Limitations.

Where any Plaintiff shall by Reason or Occasion of Privilege of Parliament be stayed or prevented from prosecuting any Suit by him commenced, such Plaintiff shall not be barred by any Statute of Limitation, or nonsuited, dismissed, nor his Suit discontinued for want of Prosecution of his Suit, but shall from time to time upon the rising of the Parliament be at liberty to proceed to Judgment and Execution. *Same Stat. and see Stat. 2, 3 Ann. c. 18.*

Summons against a Member of Parliament.

GEORGE the Second, by the Grace of God, of Great Britain, France and Ireland King, Defender of the Faith, &c. To the Sheriff of Middlesex, Greeting: We command you that you cause to be summoned P. W. Esq; he having Privilege of Parliament, that he be before us at Westminster, on

next after
to answer

R. R. in a Plea of Trespass on the Case

in the Court of King's Bench.

487

the Damage of the said R. of one hundred
Pounds; and have there then this Writ.
Witness Sir *William Lee*, Knight, at *West-*
minster, the Day of
in the Year of
our Reign.

Anthony and Bigge.

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